

Josephine County Board of Commissioners
Daniel E. DeYoung, Chair; Lily N. Morgan, Vice Chair; and Simon G. Hare, Commissioner
Anne G. Basker Auditorium
600 N.W. Sixth Street, Grants Pass, Oregon

WEEKLY BUSINESS SESSION

Agenda

February 7, 2018, 9:00 a.m.

1. **RECOGNITION OF EMPLOYEES:**
2. **PROCLAMATION:**
 - a. **In the Matter of Proclaiming the Month of February 2018 as Teen Dating Violence Awareness Month** *(page 2)*
3. **PRESENTATION:**
 - a. **Auditor Presentation 2016-17 Audit**
4. **ADMINISTRATIVE ACTION(S) IN CONSIDERATION OF:**
 - a. **Approval of Order No. 2018-005; In the Matter of the Adoption of Administrative Policy and Procedure E-5: Marijuana Use and Marijuana-Themed Events on County Property** *(page 3)*
 - b. **Approval of Contract for Personal Services with OBEC Consulting Engineers for the Design, Engineering and Permitting for the Replacement of County Culverts** *(page 6)*
 - c. **Approval of Intergovernmental Agreement 13981 with Oregon Youth Authority (OYA) to Provide Behavior Rehabilitation Services (BRS) and Placement Related Activities** *(page 20)*
 - d. **Approval of Contract with Xiologix, a Vendor for Pure Storage Arrays, to Provide Storage Area Network** *(p 49)*
5. **REQUESTS/COMMENTS FROM CITIZENS:** *(Each person will be given three (3) minutes to speak)*
6. **APPROVAL OF CONSENT CALENDAR:**
 - a. **Order No. 2018-004; In the Matter of the Re-Adoption of the Josephine County Investment Policy** *(page 54)*
 - b. **Federal Lands Access Program (FLAP) Grant for the Galice Guardrail Project** *(page 68)*
7. **OTHER:** *(ORS.192.640(1) “. . .notice shall include a list of the principal subjects anticipated to be considered at the meeting, but this requirement shall not limit the ability of a governing body to consider additional subjects.”)*
8. **MATTERS FROM COMMISSIONERS:**

The Board requests that you follow the rules and procedures for meetings as described in ORDINANCE 92-27, SECTION 7

Meetings shall at all times be orderly and respectful. When permitted, each person shall be given three (3) minutes to speak or such other longer time as may be allowed by the presiding officer. No person shall be heard until he or she states their name and address for the record. The presiding officer may terminate the meeting when necessary or refuse to recognize anyone who:

- a. Is disorderly, abusive or disruptive;
- b. Takes part in or encourages audience demonstrations, such as applause, cheering, display of signs, shouting or other conduct disruptive of the meeting;
- c. Speaks without first receiving recognition from the presiding officer and stating his or her full name and address (when requested); or
- d. Presents irrelevant, immaterial or repetitious comments.

If special physical or language accommodations are needed for this Public Session, please notify the Commissioners' Office at (541) 474-5221 at least 48-hours prior to Session. TDD (Hearing-Impaired) 1-800-735-2900.

*Before the Board of County Commissioners
for Josephine County
STATE OF OREGON*

*In the Matter of Proclaiming the
Month of February 2018 as
Teen Dating Violence
Awareness Month*



Whereas, Josephine County is committed to the well-being and protection of our youth, the safety of our communities, and to fostering a society based upon respect for one another – and where violence has no role; teen dating violence, and its various forms of control and abuse, is a serious crime that can continue into adulthood, with the potential to destroy lives; and

Whereas, teen dating violence involves physical, sexual, verbal, emotional, economic, or other abusive behavior – including harassment and cyberbullying via texting, “sexting,” emailing, instant messaging, or posting on social media – and is committed by a person intending to harm, threaten, intimidate, harass, control, isolate, or monitor another person with whom they have or have had a dating relationship; during early teenage dating experiences, new and complex emotions can result in a victim misinterpreting certain behaviors displayed by a dating partner – such as possessiveness and impulsive actions – as affection; and

Whereas, national studies on this issue indicate that approximately 1 in 3 adolescent girls experiences some form of interpersonal violence; nearly 1 in 10 teens report they were intentionally hit, slapped, or physically hurt by their boyfriend or girlfriend, and 62% of young teens – ages 11 to 14 years – report knowing friends who have been verbally abused by a boyfriend or girlfriend; and

Whereas, both Houses of the U.S. Congress have declared February as “National Teen Dating Violence Awareness and Prevention Month,” and Josephine County joins in this observance by encouraging statewide youth, families, schools, law enforcement communities, government agencies, elected officials, civic organizations, and other interested groups to show support for organizations and individuals that provide critical advocacy to victims and promote public awareness of teen dating violence.

Now, Therefore, Be It Resolved, that the Josephine County Board of Commissioners does hereby proclaim the Month of February 2018 as *TEEN DATING VIOLENCE AWARENESS MONTH* in Josephine County.

Done and Dated this 7th Day of February, 2018

JOSEPHINE COUNTY BOARD OF COMMISSIONERS

Daniel E. DeYoung, Chair

Lily N. Morgan, Vice Chair

Simon G. Hare, Commissioner

**BEFORE THE BOARD OF COUNTY COMMISSIONERS FOR JOSEPHINE COUNTY
STATE OF OREGON**

In the Matter of the Adoption of Administrative Policy and Procedure E-5: *Marijuana Use and Marijuana-Themed Events on County Property*)
)
)
)

Order No. 2018-005

WHEREAS, under federal law, marijuana is still listed as a Schedule I controlled substance, 21 U.S. Code §812(c)(10), and its manufacture, delivery or possession are federal crimes; and

WHEREAS, under federal law, real property used in the crimes of manufacturing, delivery or possession of Schedule I controlled substances, or used to facilitate any of those crimes, may be subject to federal seizure and forfeiture under 21 U.S. Code §881(a)&(7); and

WHEREAS, the Board of County Commissioners finds that there is a danger that marijuana-themed events may induce persons attending such events to engage in the possession, use, personal consumption, delivery or manufacture of marijuana while on county property; and

WHEREAS, the Board of Commissioners has determined a need for the adoption of a new county policy that sets forth the county's requirements for use of county buildings and county property; and

WHEREAS, the County's Chief Financial Officer, Risk Manager, and Department Heads, have reviewed and have had the opportunity to comment on the adoption of Administrative Policy E-5 as required by county policy and procedure; and

WHEREAS, the Board of County Commissioners has reviewed and approved the proposed policy; now, therefore

IT IS HEREBY ORDERED that the Josephine County Board of Commissioners approves and adopts a new Administrative Policy and Procedure for *Marijuana Use and Marijuana-Themed Events on County Property* as represented in Exhibit 1 attached hereto, and that said policy be incorporated into the Josephine County Administrative Policies and Procedures as Policy Number E-5, and be distributed to all County Elected Officials, and to all County offices, programs and divisions.

DONE and DATED this ____ day of February, 2018.

JOSEPHINE COUNTY
BOARD OF COMMISSIONERS

Daniel E. DeYoung, Chair

Lily N. Morgan, Vice-Chair

Simon G. Hare, Commissioner

Order No. 2018-005

Josephine County
Administrative Policies & Procedures

Adopted: Chapter E
Effective: Property/Buildings
Revised: Policy E-5
Document Repealed:

SUBJECT: Marijuana Use and Marijuana-Themed Events on County Property

- 1.0 **Purpose:** To establish County-wide policy relating to the use of marijuana and marijuana products on County property, and to the hosting of events on County property when such events may involve marijuana or marijuana products, or their use, production, sale, packaging, or transfer.
- 2.0 **General Policy:** The Board of County Commissioners of Josephine County recognizes the importance of constitutional and statutory guarantees of freedom of speech, expression, and assembly. The Board emphasizes its commitment to the protection of those essential liberties. At the same time, the Board recognizes that the manufacture, possession, use, and transfer of marijuana and marijuana products are all illegal under federal law, and that the public consumption of marijuana and marijuana products remains illegal under Oregon state law. The Board recognizes that allowing persons to use marijuana on County property, which is public property, is essentially encouraging such persons to violate state and federal law. In the same way, allowing the use of County property for events at which marijuana is likely to be used, transferred, or packaged encourages persons attending such events to engage in those activities, which are illegal on public property. Because the Board is committed to protecting the health and safety of all citizens, as well as protecting essential liberties, the Board will decline to issue permits for any event on County property if the event involves any activities at which it appears to the Board that persons in attendance will likely use, transfer, or package marijuana or marijuana products.
- 3.0 **Policy Guidelines/Procedures**
 - a. **Applications:** All applications for events, mass gatherings, or other similar activities on County property will include an affirmative statement by the applicant that the event will not include any use, transfer or packaging of marijuana or marijuana products, and that the applicant will not encourage such activities at the event. The statement must be in this form: ***“I (We) certify to Josephine County that the event for which this application is filed will not involve the public use of marijuana or marijuana products. I (We) certify that the event promoters and performers will not advocate or encourage any persons present to use marijuana or marijuana products on County property***

during the event. I (We) agree that this restriction does not constitute an infringement of any constitutionally or statutorily protected right or freedom. I (We) agree that the bond required by Josephine County for this event is reasonable and necessary and I (We) further agree that the bond will be forfeited to Josephine County if this restriction is violated.

- b. **Bond:** All applications for such events will require a bond in an amount to be determined by the County Department Head reviewing the application, to ensure compliance with the requirement that no such activities will be allowed or encouraged. In no case will the bond be less than \$500.

Every application will include an acknowledgement that if the restriction is violated, the County will retain the bond and may assess additional fees.

- c. **Requirements:** Any application that does not comply with these requirements will be denied, and there will be no exceptions. It is the responsibility of the Department Head to review each application to ensure that all applications to use County property for events comply with these requirements.



Josephine County Board of Commissioners

AGENDA REQUEST FOR BOARD OF COMMISSIONERS

Agenda Requests are due by NOON on Monday of the week scheduled for Administration Workshop
Requests received after that time will be placed on the Administration Workshop agenda for the following week
If sending documents electronically – send to both
wwatkins@co.josephine.or.us and rperrin@co.josephine.or.us

REVISED AUGUST 2017

Date Submitted to BCC	01/19/18
Administration Workshop Meeting Date (Thursday)	02/08/18 1-31-18
WBS Meeting Date (Wednesday) Note: Second Wednesday of the month is evening session	02/07/18

AGENDA TITLE: Contract for Personal Services with OBEC Consulting Engineers for the design engineering and permitting for the replacement of <u>County</u> culverts.	
Department/Contact Person (Include Title and Ext. #)	Debbie Foster, Sr. Dept. Specialist ext. 4433
Presenter (Include Name and Title)	Chuck DeJanvier, County Engineer ext. 4402
Background information	Design engineering and permitting services for 6 (six) culvert replacements in Josephine county.
Action you are requesting from the Board	Boards Signatures
Reviewed by Finance Director (If yes, Finance's signature required)	N/A
Reviewed by Legal Counsel (If yes, Legal's signature required)	Yes <i>Wlt</i>
Reviewed by Information Technology (If yes, IT's signature required)	N/A
Total Revenue, Cost, or Pass-Thru Funds to the County	\$140,108.00 cost
Notes or Special Instructions to BCC Staff	Please return the original signed Contract to Debbie Foster at Public Works

Title of Document(s) Submitted <u>All exhibits must be clearly marked</u>	Number of original documents submitted	Are all signatures on the documents? Y/N or BCC only	Are additional signatures needed? Y/N	Will a state or federal agency be signing the document? Y/N	Will additional signatures be received electronically? Y/N
Contract for Personal Services with OBEC Consulting Engineers	1	BCC only	No	No	No

DOCUMENT DISTRIBUTION: Board staff is required to submit one fully executed document with original Board signatures for recording in the Board's Journal in the County Clerk's Office unless otherwise specified under Notes or Special Instructions to BCC Staff.

- **All Signatures:** If all signatures are obtained, one fully executed original document will be filed in the Board's Journal in the County Clerk's Office and all other originals will be returned to the contact person. If only one original was submitted, an electronic copy will be returned to the contact person.
- **Additional Signatures Needed on Original Documents:** Board staff will retain one document with original Board signatures and return the additional originals to the contact person to obtain the remaining signature(s). Upon department receipt of the fully executed document, one fully executed original document must be returned to Board staff for recording in the Board's Journal in the County Clerk's Office.
- **Additional Signatures Needed on Electronic Documents:** Board staff will retain one document with original Board signatures and return an electronic copy to the contact person to obtain the remaining signature(s). Upon department receipt of the fully executed electronic document, one fully executed electronic document must be returned to Board staff for recording in the Board's Journal in the County Clerk's Office.

CONTRACT FOR PERSONAL SERVICES
Josephine County, Oregon

This Contract for Personal Services is made by and between JOSEPHINE COUNTY, OREGON, a political subdivision of the State of Oregon ("County"), by and through its Public Works Department, and OBEC Consulting Engineers, Inc., a corporation registered in the State of Oregon ("Contractor"). County and Contractor agree as follows:

1. **TERM:** This Contract shall commence on February 8, 2018 and shall continue until February 8, 2020, unless terminated or extended as provided herein.
2. **ADMINISTRATION OF CONTRACT:** The Josephine County Public Works Director or his designee shall be the Contract Administrator and be authorized to request, oversee, and approve Services.
3. **SCOPE OF SERVICES:** Contractor shall perform the services listed in Scope of Work, Exhibit "A," attached hereto and incorporated herein. The parties agree that the terms of this Contract may be amended as provided in Section 23 if the environmental regulations of the State of Oregon or of the United States require amendment in order to comply with such regulations. The compensation for service listed in Scope of Work, Exhibit "A" is identified in Section 6.3.
4. **LICENSES:** During the term of this Contract, Contractor and its agents shall possess any licenses and certificates required by law for performing the services.
5. **INDEPENDENT CONTRACTOR:** Contractor shall perform the services required by this Contract as an Independent Contractor. Contractor shall not be deemed an employee of County and shall not be entitled to any benefits from County that generally are granted by County to its employee. Contractor shall be responsible for all federal or state taxes applicable to any compensation or payments paid to Contractor under this Contract.
6. **PAYMENT:** County shall pay Contractor as follows:
 - 6.1 On or before the 10th day of each month, Contractor shall submit to the Contract Administrator a request for payment including information on the services completed and hours worked in the previous month. The payment request shall describe all work performed with particularity, by whom and on which date it was performed, the number of hours spent performing such work, and shall itemize and explain all expenses for which reimbursement is claimed.
 - 6.2 County shall pay Contractor on or before the 20th day of each month for services performed in the previous month. County may require Contractor to provide supplementary information if a Contractor's report is inadequate for evaluating a request for payment.
 - 6.3 During the term of this contract, total payments by County to Contractor shall not exceed the amount of \$140,108.00 without the prior written approval of the Contract Administrator.
 - 6.4 County may suspend or withhold payments if Contractor fails to comply with requirements of this Contract.
 - 6.5 **Local Budget Law:** The County shall not be required to make any expenditure under this Contract if funds have not been appropriated pursuant to ORS 294.305 et seq. (Local Budget Law). The County shall not be indebted or liable for any obligation created

by this Contract in violation of the debt limitation provisions of Article XI, Section 10 of the Oregon Constitution.

7. **RECORDS MAINTENANCE:** Contractor shall retain and keep accessible all books, documents, papers, and records that are directly related to this Contract, the funds paid to Contractor, or any Services delivered under this Contract for a minimum of seven (7) years following the termination of this Contract. If there are unresolved audit or other questions at the end of the seven-year period, Contractor shall retain the records until the questions are resolved.
8. **OWNERSHIP OF DOCUMENTS:** All documents produced by Contractor or its agents pursuant to this Contract shall be the property of County. Contractor shall have the right to obtain and keep copies of documentation of all activities performed.
9. **CONFIDENTIALITY:** Contractor shall maintain confidentiality of all records, reports, or other information acquired under this Contract that are exempt from disclosure under the Oregon Public Records Law (ORS 192.501 et seq.). Contractor shall not release any such information that is exempt from disclosure without the prior written consent of County.
10. **INDEMNIFICATION:**
 - 10.1 County has relied upon the professional ability, qualifications and training of Contractor as a material inducement to enter into this Contract. Contractor warrants that all of the services will be performed in accordance with generally accepted professional practices and standards and according to the requirements of applicable federal, state and local laws. The acceptance of Contractor's services by County shall not operate as a waiver or release of any claim.
 - 10.2 Contractor shall defend, indemnify and hold harmless County, its officers, agents and employees, from any and all claims, liabilities, demands, damages, actions or proceedings arising from or relating to the negligence, wrongful acts, or omissions of Contractor in connection with the performance of any services under this Contract.
 - 10.3 County shall defend, indemnify and hold harmless Contractor, its officers, agents and employees, from any and all claims, liabilities, demands, damages, actions or proceedings arising from or relating to the negligence, wrongful acts, or omissions of County in connection with the performance of any services under this Contract.
 - 10.4 Contractor shall not be deemed an agent of County under the Oregon Tort Claims Act. Contractor has no authority to bind County to agreements, contracts, leases, or other obligations, nor shall County be liable for any tortious act or omission of Contractor.
11. **INSURANCE:** Contractor shall, at its own expense, provide and maintain insurance for the duration of this Contract as follows:
 - 11.1 **Professional Liability Insurance:** Contractor shall obtain and maintain professional liability insurance which provides coverage of direct and vicarious liability relating to any damages caused by an error, omission or any negligent acts of Contractor. Contractor shall maintain professional liability coverage of not less than the amount of \$1,000,000 per person per incident.
 - 11.2 **Worker's Compensation Insurance:** Contractor shall obtain and maintain Workers Compensation Insurance as required by law.

- 11.3 **Automobile Liability Insurance:** Contractor shall obtain and maintain automobile liability insurance with limits of liability, per occurrence, of \$1,000,000 for bodily injury and \$1,000,000 for property damage.
- 11.4 **General Liability Insurance:** Contractor shall be required to provide and maintain general liability insurance against loss or damage to persons or property with a minimum limit of liability per occurrence of \$1,000,000 for bodily injury and \$1,000,000 for property damage
- 11.5 All insurance policies must name Josephine County as an additionally named insured and must be through an insurance company licensed in the State of Oregon. The insurance policy shall provide that "Josephine County" shall include all authorities, boards, bureaus, commissions, divisions, departments, districts, and offices of Josephine County and the individual members, employees and agents thereof in their official capacities.
- 11.6 All insurance policies shall be evidenced by Certificates of Insurance which shall be delivered to County prior to commencing services or work under this Contract. Each certificate or policy shall require that, thirty (30) days prior to cancellation or material change in the policies, notice of cancellation or material change must be given to the County by certified mail, return receipt requested. All such notices shall name the Contractor and identify the contract number.

12. TERMINATION AND DEFAULT:

- 12.1 **For Convenience:** This Contract may be terminated by either party upon ten (10) days' written notice.
- 12.2 **For Cause:** Either party may terminate this Contract, in whole or in part, effective upon delivery of written notice to the other party at such later date as may be established upon the occurrence of any of the following:
- a. If funding to the County from the State or other sources is not obtained or is not continued at levels sufficient to pay for services authorized by this Contract.
 - b. If changes in federal or state law or regulations abrogate or disallow procurement of Contractor's services under this Contract.
 - c. If any letter of approval, license, or certificate required by law or regulation to be held by Contractor in order to provide services under this Contract is denied, revoked, suspended, or not renewed.
 - d. If a party fails to provide the services or perform the acts required under this Contract, and after receipt of written notice from the other party, fails to correct such failure within ten (10) calendar days or such other period as required. Written notice shall specify the nature of the breach with reasonable particularity. If the breach specified in the notice cannot be completely cured within the ten-day period, but curative action is undertaken with reasonable diligence, then such breach shall not constitute a default. Time is of the essence of this contract.
- 12.3 **Major Breach:** Either party may declare a default immediately upon the occurrence of a major breach by the other party. A major breach is one that substantially impairs the contractual relationship of the parties to provide the services pursuant to this Contract, and includes, but is not limited to:

- a. Acts or omissions that jeopardize the health, safety or security of any person;
- b. Misuse of funds;
- c. Intentional falsification of records;
- d. Malfeasance by either party's officers, agents, or employees;
- e. Intentional refusal to comply with the provisions of this Contract; and
- f. A pattern of repeated non-material breaches.

12.4 In the event of a default, the party injured by the default may terminate this Contract and pursue any remedies available under Oregon law. Any litigation must be conducted in Circuit Court of the State of Oregon for Josephine County.

12.5 The rights and remedies of the parties provided herein are not exclusive and are in addition to any other rights and remedies provided by law.

13. **LIABILITY OF COUNTY:** The County's liability for monetary damages for breach of this Contract shall, in the aggregate, be limited to the payment amount of this Contract. In no event shall the County be liable to Contractor for any indirect, special or consequential damages, notwithstanding any notice of the possibility of such damages.
14. **FORCE MAJEURE:** Neither County nor Contractor shall be held responsible for delay or default caused by fires, riot, civil disobedience, acts of God, or war where such cause was beyond the control of either party. Both parties shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.
15. **THIRD PARTY BENEFICIARY:** County and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives any benefit or right, either directly or indirectly, to any third persons.
16. **GOVERNING LAW:** This Contract shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflict of law. Any claim, suit, action or other proceeding that arises from or relates to this contract shall be brought and conducted exclusively in the Circuit Court of the State of Oregon for Josephine County; provided, however, that if any such claim must be brought in a federal forum, it shall be brought and conducted exclusively in the United States District Court for the District of Oregon.
17. **COMPLIANCE WITH LAW:** County and Contractor shall comply with all applicable federal, state, and local laws, statutes, ordinances, rules, and regulations.
18. **ASSIGNMENT:** Contractor shall not assign Contractor's interest in this Contract or enter into subcontracts for any part of the Services without the prior written consent of County.
19. **WAIVER:** No provision of this Contract shall be deemed waived unless such waiver is in writing and signed by the Party waiving its rights.
20. **SEVERABILITY:** If any provision of this Contract shall be invalid or unenforceable in any respect for any reason, the validity and enforceability of the remaining provisions of this Contract shall not be impaired.
21. **FURTHER ASSURANCES:** The parties agree to promptly execute and deliver any such further instruments and to perform any such further acts as may be required to carry out the intent and purpose of this Contract.
22. **NOTICES:** Any notice required by this Contract must be given in writing by personal delivery or by certified mail return receipt requested to the following addresses. Any notice so mailed shall

be deemed to be given three (3) days after mailing. Any notice by personal delivery shall be deemed to be given when actually delivered.

22.1 County's address for notices is:

Robert Brandes, Director
Josephine County Public Works Department
201 River Heights Way
Grants Pass, OR 97527

22.2 Contractor's address for notices is:

Guy N. Hakanson, PE, Vice President
OBEC Consulting Engineers Inc
920 Country Club Road, Suite 100B
Eugene OR, 97401

- 23. **AMENDMENT:** This Contract may be amended or modified only when such amendment is reduced to writing and signed by both parties in the same manner as below.
- 24. **TIME IS OF THE ESSENCE:** The parties agree that time is of the essence with regard to performance of all obligations under this contract.
- 25. **AUTHORITY:** The person signing this contract on behalf of Contractor represents that he or she has authority to do so.
- 26. **ENTIRE CONTRACT:** This contract and the attached Exhibit "A" constitutes the entire agreement between the parties and supersedes any previous promises, representations, agreements, conditions or understandings between the parties. There are no other promises, representations, agreements, conditions or understandings, either oral or written, between the parties other than those set forth in this Contract.

CONTRACTOR
OBEC Consulting Engineers Inc.

JOSEPHINE COUNTY
Josephine County Public Works

Guy N. Hakanson, PE, Vice President

Daniel E. De Young, Chair

Date

Lily N. Morgan, Vice-Chair

Simon G. Hare, Commissioner

Robert Brandes, Public Works Director

Date

Date

Approved as to Form:

County Legal Counsel

Date



Exhibit "A"

EUGENE, OR
Corporate Office
541.683.6090

LAKE OSWEGO, OR
503.620.6103

SALEM, OR
503.589.4100

MEDFORD, OR
541.774.5590

VANCOUVER, WA
360.314.2391

www.obec.com

January 18, 2018

Chuck DeJanvier, PE
County Engineer
Josephine County Public Works
201 River Heights Way
Grants Pass, OR 97527

Re: Josephine County Culvert Replacements
OBEC Job No. P020-0033.00

Dear Mr. DeJanvier:

OBEC Consulting Engineers, Inc. is ready to assist Josephine County staff with evaluating, designing and permitting the replacement of the six (6) culverts listed below.

1. Cloverlawn Drive at MP 4.3
2. Cloverlawn Drive at MP 4.5
3. Winona Road at MP 2.3
4. Bridge Lane at MP 1.4
5. Murphy Creek Road at MP 3.3 (2 – 48" existing culverts)
6. Jump Off Joe Creek Road at MP 0.5

After visiting each site in December of 2017, OBEC understands the site constraints and firsthand issues with each site. Each site will have different environmental permitting requirements, different hydraulic requirements, and different staging/ closures that will be needed for construction.

Assumptions:

Josephine County staff shall complete all survey needs

R/W acquisition is not anticipated or will be handled separately

Josephine County will provide ADT and speed at each site

Josephine County staff will complete advertising and bid opening(s)

OBEC will put together up to two bid packages

If any culvert needs to be lengthened more than 20%, a Corps/DSL permit will be necessary and will be added by addendum at the direction of the County.

Services not included:

Bridges or box culvert designs

Geotechnical Studies

Hazmat Studies

Archeological or Historic resource analysis

Our proposed detailed scope of services for the design phase is as follows:



Task 1 Project Management and Coordination

The major objectives of this task are to schedule, coordinate, and supervise project work and to establish lines of communications between OBEC and County staff. OBEC shall keep the County project manager informed of the project work progress and aware of changes that may affect the project design, schedule, and related costs.

OBEC will be responsible for the following project management tasks:

- Schedule, coordinate, and supervise project work
- Maintain communications and coordination with County staff
- Monitor scope, schedule & budget for the project
- Produce monthly invoices and progress reports (assumed to be no more than twelve)
- Two review/team meetings by conference call.

Task 2 Environmental Documentation, Coordination and Permits

2.1 Accumulation of Information and Agency Coordination

Consultant shall:

- Obtain and review existing environmental information related to the Project sites and coordinate/communicate with project team and County to begin environmental tasks, verify schedule, and estimate impacts.
- Research existing information regarding environmental compliance for the project sites, review existing environmental regulations, and document design requirements necessary to comply with environmental and permitting requirements.
- Coordinate with resource agencies if needed to clarify requirements and exemptions

Deliverables

Consultant shall provide:

- Information obtained under this task will be included in the deliverable under Task 2.4

2.2 Wetland Determination Field Work

Consultant shall:

- Consultant shall complete a wetland field determination and OHWM demarcation for the Project areas.
- Use available data (including but not limited to: soil surveys, aerial photos, National/Local Wetland Inventory maps) as well as data gathered in the field to document the presence or absence of wetlands and waters.
- Determine wetland boundaries within the PSA in accordance with the criteria and methods described in the *1987 Corps of Engineers Wetland Delineation Manual (Environmental Laboratory Technical Report Y-87-1)* and appropriate Regional Supplements.
- Place flags in the field to show wetland and upland sample plot locations, and the wetland boundaries. Label and number the flags to identify their function.



- Prepare sketch maps of approximate wetland boundaries with numbering of flags or stakes to be provided prior to site surveys for Project base mapping. Survey of all flags to be provided by the County.
- Ensure that field methods used and data collected meet the DSL technical requirements for wetland delineations and ordinary high water demarcations. Collect and record wetland delineation data on approved wetland determination data sheets for possible inclusion with a wetland delineation report.
- Place flags in the field to show the OHWM elevation of all jurisdictional surface waters. Assess the OHWM elevation using resource agency accepted field indicators. The two (2) year flood event elevation (calculated) may be used in the absence of field indicators.
- Prepare sketch map of approximate OHWM boundaries concurrently with the wetland and OHWM field work with sequential numbering of flags or stakes to be provided prior to site survey for Project base mapping. The sketch map must include scale and reference points such as distance from fence corner, road sign, etc. Survey to be provided by the County.

Deliverables

Consultant shall provide:

- Field flagging of the wetlands and waters boundaries for the six project areas.
- A sketch map of approximate wetland and waters boundaries to County.
- Results of wetland field work will be summarized in the deliverables under Task 2.4

2.3 ODFW Fish Passage Plan

Consultant shall:

- Coordinate with the local ODFW District Fish Biologist to describe the project and provide information relevant to fish passage.
- Determine the active channel width using ODFW and NMFS standards, and obtain concurrence of the active channel width from the ODFW District Biologist. Active channel width field measurements shall be completed during the wetland delineation field work under Task 2.2.
- Prepare six ODFW Fish Passage Plans (one for each culvert) using the stream simulation design method.
- Consultant shall submit the fish passage plans to ODFW for review and concurrence and incorporate fish passage requirements into plans and specifications.

It is assumed that the project will be designed to meet Oregon fish passage law.

Deliverables

Consultant shall provide:

- Six fish passage plans to County for review.
- Six final fish passage plans to ODFW with copy to County.



- Submit the fish passage plan concurrence from ODFW to County upon receipt from ODFW.

2.4 Environmental Permitting Memorandum

Consultant shall:

- Draft a brief Environmental Permitting Memorandum documenting how these projects comply with environmental and permitting requirements.
- Include in the memo the applicable federal, state, and local environmental laws and permits that could be triggered by this project and document how the project meets those requirements.

One memo will be provided to cover all six project areas.

Deliverables

Consultant shall provide:

- Draft and final Environmental Permitting memorandum to County.

Task 3 Hydraulic Analysis

OBEC will perform a hydrologic analysis at each culvert site based upon the 25-year or 50-year design storms as recommended by the ODOT Hydraulic Manual. Lower design storms may be considered based on County approval, if site constraints prohibit passage of the recommended design storm. These flows will be used to perform a simplified hydraulic analysis utilizing Hydraflow or ODOT Hydraulic Manual design charts where feasible to determine the appropriate size for each culvert. The design will include designing culvert based on upstream hydrology, site constraints, end treatments and protection. The hydraulic analysis will be documented in a Hydraulic Memorandum.

Based on field observations, it is expected that each culvert size will be upsized.

Proposed culverts shall comply with Oregon Fish Passage Law and applicable programmatic conditions, as required by reviewing agencies.

Deliverables

Consultant shall provide:

- Hydraulic Memorandum to County

Task 4 Design Engineering

This task includes developing plans, specifications, and quantity and cost estimates (PS&E). OBEC shall prepare technical specifications for the plan sheets and bid items. It is anticipated that the plan sheets (11x17") needed will be; a cover sheet, one plan and one detail sheet for each site, and erosion & sediment control plan and detail sheet for each site.



OBEC shall utilize the *Oregon Standard Specifications for Construction, 2018 edition* and write special provisions utilizing ODOT boilerplates. Special provisions will be stamped by an engineer licensed to practice in the State of Oregon.

Detailed quantity calculations shall be done for a cost estimate that includes bid item quantities for all of OBEC's design work. OBEC shall ensure consistency between the plans, specifications, and estimate/bid items. The County will review the draft PS&E package and then Final PS&E documents will be submitted, addressing all of the County's comments.

Deliverables

Upon responding to all comments and making necessary revisions OBEC shall prepare and submit final PS&E construction documents for up to two bid packages.

Consultant shall provide:

- Two pdf sets of Draft PS&E documents (unsigned)
- Two pdf sets of Final PS&E documents (signed)

Task 5 Quality Control/Quality Assurance (QA/QC)

OBEC shall perform the following quality control activities prior to the Review PS&E Submittal:

- Independent design check of hydraulic analysis and design. This includes calculations, plan sheet review, specifications review, and cost estimate check.
- Quality assurance (QA) review of plans, specifications, estimate, and constructability review by a senior engineer.
- Review of overall project PS&E for consistency.

Deliverables

Consultant shall provide:

- Documentation of reviews according to OBEC's Quality Management Program.

Task 6 Bidding Assistance

Task 6.1 Respond to Bidder Questions

The County will manage all questions and answers from potential bidders and OBEC will provide the County with assistance in replying to Contractor questions. It is assumed no addenda will be required.

Deliverables

Consultant shall provide:

- Bidding Question Response Log.



Schedule:

OBEC is prepared to begin work immediately upon receipt of Notice to Proceed and will complete the PS&E package by summer of 2018.

OBEC will provide the services outlined above on a Time & Materials basis based on the attached Breakdown of Cost and 2018 rate sheet for an amount not to exceed of \$140,108.

We hope that we have provided you with the information that you require at this time. Please call me if have any questions or need any additional information.

Sincerely,

A handwritten signature in cursive script that reads "Jaime Jordan".

Jaime Jordan, PE
Project Manager

JLJ:
Enclosures (if appropriate)

cc:



2018 Salary Grade & Hourly Rates

<u>Personnel Classification</u>		<u>Personnel Classification</u>	
Principal/President	\$253	Principal/Vice President	\$243
<u>Design</u>		<u>Construction</u>	
Division Manager 3	\$230	Division Manager 3	\$230
Division Manager 2	\$219	Division Manager 2	\$219
Project Manager 3	\$219	Construction Project Manager 3	\$219
Engineer 8	\$219	Division Manager 1	\$188
Division Manager 1	\$188	Construction Project Manager 2	\$188
Project Manager 2	\$188	Construction Project Manager 1	\$168
Engineer 7	\$188	Assistant Project Manager 1	\$143
Project Manager 1	\$168	Construction Engineer 5	\$143
Engineer 6	\$168	Construction Engineer 4	\$127
Utility Coordinator 3	\$143	Construction Engineer 3	\$115
Transportation Planner	\$143	Construction Engineer 2	\$99
Engineer 5	\$143	Engineering Tech 4	\$127
Designer 4	\$127	Engineering Tech 3	\$99
Engineer 4	\$127	Engineering Tech 2	\$84
Senior Environmental Specialist	\$127	Engineering Tech 1	\$73
Utility Coordinator 2	\$127	CECOP	\$61
Utility Coordinator 1	\$115		
Designer 3	\$115	<u>Administration</u>	
Engineer 3	\$115	IT Manager / HR Manager / Marketing Manager	\$188
Environmental Specialist 3	\$115	Proposal Manager	\$127
Designer 2	\$99	Contract Administrator	\$127
Engineer 2	\$99	Database Controller	\$115
Environmental Specialist 2	\$99	Sr. Proposal Coordinator	\$115
Designer 1	\$87	Project Accountant / Project Controller	\$115
Engineer 1	\$87	Proposal Coordinator / Sr. Graphic Artist	\$99
Environmental Specialist 1	\$87	Network Administrator 1	\$99
Drafting Supervisor	\$143	Administrative Assistant 4 / Sr. Billing Clerk	\$87
Sr. CAD Drafter	\$115	Marketing Coordinator 1 / Graphic Artist	\$87
CAD Drafter 4	\$99	Administrative Assistant 3 / Sr. Accounting Clerk	\$84
CAD Drafter 3	\$87	Administrative Assistant 2 / Accounting Clerk 2	\$73
CAD Drafter 2	\$84	HS Interns / File Clerks	\$47
CAD Drafter 1	\$61		
<u>Surveying</u>			
Division Manager 1	\$188		
Project Surveyor - Team Lead	\$143		
Project Surveyor	\$127		
Survey Tech 3	\$99		
Survey Tech 2	\$84		
Survey Tech 1	\$61		

Travel/Reimbursable Expenses:

Mileage: ODOT Current Rate
 Reimbursable job costs will be invoiced at cost.

Equipment Charges:

Special equipment @ direct rental cost

Josephine County
OBEC Consulting Engineers

Josephine County Culvert Replacements
ESTIMATED COST

TASK	Division Manager 2	Project Manager 1	Engineer 5	Engineer 2	Drafting Supervisor	CAD Drafter 4	Engineer 3	Project Associate / Project Contributor	Senior Environmental Specialist	Environmental Specialist 2	TOTAL HOURS	TASK BUDGET
	BS	BJ	BFV	ACA	DLD		ECF	KWLD	JAV	JBT		
TASK 1 Project Management and Coordination	0	80									80	\$14,254.00
TASK 2 Environmental Determination, Coordination and Permits												
2.1 Acquisition of Information and Agency Coordination									20	10	30	\$3,330.00
2.2 Wellhead Determination Field Work									28	28	56	\$6,228.00
2.3 GUPW Fish Passage Plans									48	48	96	\$10,848.00
2.4 Environmental Permitting Memoranda								2	0	24	24	\$3,622.00
TASK 3 Hydraulics Analysis												
TASK 4 Design Engineering	12	40	60	280	20	180	40				136	\$14,168.00
TASK 5 Quality Control / Quality Assurance (QA/QC)	8	16	24		0	0	6				64	\$7,968.00
TASK 6 Bidding Assistance		8					12				24	\$2,984.00
Totals	28	144	100	600	20	180	58	18	104	110	1168	
TOTAL HOURS												
AVERAGE HOURLY RATE	\$219.00	\$148.00	\$143.00	\$99.00	\$143.00	\$99.00	\$143.00	\$115.00	\$127.00	\$99.00		\$139,322.00
TOTAL LABOR ESTIMATE	\$5,644.00	\$14,192.00	\$14,200.00	\$59,800.00	\$2,860.00	\$18,414.00	\$8,294.00	\$2,070.00	\$13,208.00	\$10,890.00		\$140,108.00
MISCELLANEOUS EXPENSES =												\$0.00
TOTAL OBEC PROJECT ESTIMATE =												\$140,108.00
Total Estimated Costs =												\$140,108.00

EXPENSES

Category and Expense	Design	Construction
Company and Expense		
Message for Task 2.2 - 350 miles at \$0.245/mile	\$196.00	\$0.00
Hotel and Parking for 2 people - One night, two days	\$390	
Totals	\$586.00	\$0.00



Josephine County Board of Commissioners

AGENDA REQUEST FOR BOARD OF COMMISSIONERS

Agenda Requests are due by NOON on Monday of the week scheduled for Administration Workshop
Requests received after that time will be placed on the Administration Workshop agenda for the following week
If sending documents electronically – send to both
rperrin@co.josephine.or.us and wwatkins@co.josephine.or.us

REVISED JUNE 2017

Date Submitted to BCC	01/25/18
Administration Workshop Meeting Date (Thursday)	01/31/18
WBS Meeting Date (Wednesday) Note: Second Wednesday of the month is evening session	02/07/18

AGENDA TITLE: *MUST COMPLETE THIS SECTION***** (Please provide a clearly written title sufficient to describe the item on the Weekly Business Agenda: Resolutions or Orders use full title, Contracts or IGAs state who it is between and service being provided, and Amendments who it is between and original IGA/Contract #. See full examples on page 2)

Intergovernmental Agreement #13981 between Josephine County and the Oregon Youth Authority (OYA) to provide Behavior Rehabilitation Services (BRS) and Placement Related Activities to OYA BRS clients residing in the County's Turning Point Residential Program.

Department/Contact Person (Include Title and Ext. #)	Juvenile Justice/James Goodwin, Director ext. 4020
Presenter (Include Name and Title)	James Goodwin, Director
Background information	The Juvenile Justice Department wishes to enter into an agreement with OYA to house OYA BRS youth on parole or probation in the Turning Point Residential facility, and to provide BRS Basic Residential or BRS Community Step-down care.
Action you are requesting from the Board	Approve and sign the IGA
Reviewed by Finance Director (If yes, Finance's signature required)	No
Reviewed by Legal Counsel (If yes, Legal's signature required)	Yes
Reviewed by Information Technology (If yes, IT's signature required)	No
Total Revenue, Cost, or Pass-Thru Funds to the County	BRS Revenue to County not to exceed \$346,557.15 and clothing reimbursement not to exceed \$630.00. Total \$347,187.15
Notes or Special Instructions to BCC Staff	

Title of Document(s) Submitted <u>All exhibits must be clearly marked</u>	Number of original documents submitted	Are all signatures on the documents? Y/N or BCC only	Are additional signatures needed? Y/N	Will a state or federal agency be signing the document? Y/N	Will additional signatures be received electronically? Y/N
IGA #13981 between JOCO and OYA to provide BRS services to youth residing in the Turning Point Residential Program	1	N	Y	Y	Y

DOCUMENT DISTRIBUTION: Board staff is required to submit one fully executed document with original Board signatures for recording in the Board's Journal in the County Clerk's Office unless otherwise specified under Notes or Special Instructions to BCC Staff.

- **All Signatures:** If all signatures are obtained, one fully executed original document will be filed in the Board's Journal in the County Clerk's Office and all other originals will be returned to the contact person. If only one original was submitted, an electronic copy will be returned to the contact person.



Oregon

Kate Brown, Governor

**Oregon Youth Authority
Procurement Unit**
530 Center Street NE, Suite 500
Salem, Oregon 97301
Voice: (503) 373-7333
Fax: (503) 373-7921
www.oregon.gov/OYA



Document Return Statement

January 18, 2018

Re: Agreement #13981 hereafter referred to as "Agreement."

Please complete and return the following documents:

- This Document Return Statement
- Completed signature page(s)

Note: If you have any questions or concerns with the above referenced Agreement, please feel free to contact Alisha Schultz, Senior Contract Specialist at (503) 373-7333.

Please complete the below:

I _____, _____
(Name) (Title)

received a copy of the above referenced Agreement, consisting of 27 pages between the State of Oregon, acting by and through its **Oregon Youth Authority** and **Josephine County** by email from OYA Procurement Unit on January 18, 2018.

On _____, I signed the printed form of the electronically transmitted Agreement without change.

(Contractor's Authorized Signature)

(Date)

STATE OF OREGON
INTERGOVERNMENTAL AGREEMENT
BEHAVIOR REHABILITATION SERVICES



Agreement #13981

This Agreement is between the State of Oregon, acting by and through its **OREGON YOUTH AUTHORITY**, hereafter called "OYA" or "Agency", and **JOSEPHINE COUNTY**, hereafter called "County".

This Agreement shall become effective on **January 18, 2018**. Unless extended or terminated earlier in accordance with its terms, this Agreement shall terminate when Agency accepts County's completed performance or on **June 30, 2019**, whichever date occurs first. Agreement termination shall not extinguish or prejudice Agency's right to enforce this Agreement with respect to any default by County that has not been cured.

County agrees to perform, and Agency agrees to pay for, the services and deliverables described in section 1 (the "Services").

1. STATEMENT OF SERVICES.

County shall perform Services as described below.

1.1 GENERAL INFORMATION.

The mission of the Oregon Youth Authority (OYA) is to protect the public and reduce crime by holding youth offenders accountable and providing opportunities for reformation in safe environments. Youth are committed to state custody as a result of criminal acts in one of Oregon's 36 counties. Youth may remain in OYA custody until a maximum age of 25 years. OYA provides a continuum of services and sanctions including: parole and probation services, residential and foster care services, individualized treatment and support, juvenile crime prevention programs, and secure close custody facilities for youth who represent an unacceptable risk to the public.

This Agreement will address the needs of youth offenders on parole and probation.

For the purposes of this Agreement:

"Absent Day" has the meaning set forth in OAR 416-335-0020.

"Average Daily Population (ADP)" means the Total Days of Care in a given time period divided by the number of calendar days in the same time period.

"Billable Care Day" has the meaning set forth in OAR 410-170-0020 as supplemented by OAR 416-335-0090.

"JPPO" means the Juvenile Parole and Probation Officer as defined in OAR 416-335-0020.

“JJIS” means Juvenile Justice Information System.

“OAR” means Oregon Administrative Rule.

“OYA BRS Client” means a BRS Client as that term is defined in OAR 410-170-0020 who has received prior authorization from OYA under OAR 416-335-0040.

“Total Days of Care” means the total of all Billable Care Days and Absent Days for all OYA BRS Clients served under this Agreement in a given time period.

1.2 REQUIRED SERVICES, DELIVERABLES AND DELIVERY SCHEDULE.

County shall provide Behavior Rehabilitation Services (BRS) Program Services and Placement Related Activities as defined in, and in accordance with, OAR 410-170-0000 through 410-170-0120 and 416-335-0000 through 416-335-0100, to OYA BRS Clients. County shall provide only the BRS Types of Care identified in the following Exhibits which are attached hereto and by this reference are made a part of this Agreement.

Exhibit A - BRS Basic Residential – Josephine County

Exhibit B – BRS Community Step-down – Josephine County

1.3 ACCEPTANCE CRITERIA AND PROCESS.

County shall provide all reports as required under applicable law, the Agreement and Exhibit(s). The County shall also provide the Agency with verbal updates on the OYA BRS Client’s progress both as requested by the Agency and as deemed appropriate by the County.”

1.4 SPECIAL REQUIREMENTS

a. Referrals:

- i. The County shall offer services to OYA BRS Clients who are under the care and custody of the Oregon Youth Authority and are between the ages 12 – 25. The County shall accept referrals statewide. The County’s preferred age range, and the County’s admission criteria and rejection criteria are described in the Exhibits.
- ii. Exceptions to admissions criteria may be considered on a case by case basis. County may admit OYA BRS Clients outside of normal criteria only with written approval from the Manager of Agency’s Community Resources Unit.
- iii. The County and the JPPO making the referral shall arrange a time for a screening interview with the OYA BRS Client who appears to be appropriate prior to placement with County. Whenever possible this interview shall be accomplished through video conferencing. At a minimum, this interview will include the participation of the OYA BRS Client, his or her JPPO and the County’s representative. The JPPO may invite the OYA BRS Client’s family or caretaker to attend this meeting as appropriate. At this meeting, the County shall describe its

program, its rules, its treatment approach and the procedure for the OYA BRS Client's acceptance.

- iv. With written approval from OYA's Community Resources Unit, County may place an OYA BRS Client whose behavior may add significant stress to the County's living environment on a waiting list until sufficient support exists to sustain that person in the County's program.
 - v. The County shall ensure that a legible copy of the OYA BRS Client's Parole/Probation Agreement or court order defining probation terms is received by County at intake.
 - vi. The County shall discuss with the JPPO and the parents/guardians the OYA BRS Client's clothing needs per the YA 3070, medication/medical needs, home visit resource and home visit transportation planning.
- b. Youth Supervision Requirements
- i. When making a determination of the supervision needs for OYA BRS Clients served under this Agreement, the County shall take into account the specific traits of the BRS Clients currently in the County's program and the safety of the community, the program staff and the BRS Clients.
 - ii. If County provides proctor day treatment subject to OAR 410-170-0090(3), County shall provide supervision by professionally trained staff while any OYA BRS Client is in the facility.
- c. Termination Arrangement. If the County is providing BRS Program Services and Placement Related Activities and this Agreement is terminated, expires or is not renewed, the Agency, through its liaison staff or other designated persons, shall assume responsibility for the planning, supervision and work required in moving and relocating the OYA BRS Clients who are under the County's care under this Agreement on the termination date or at an earlier date if earlier removal is deemed necessary by the Agency. The County agrees to cooperate fully with Agency staff in the preparation for and carrying out of the work necessary to remove the OYA BRS Clients from the County's care. Nothing in this section shall be deemed to limit the extent of remedies or amount of damages available to the parties under this Agreement.
- d. Media Disclosure. The County shall not provide information to the media regarding a recipient of services purchased under this Contract without first consulting the Agency's Communication Office. The County shall make immediate contact with the Agency's Communication Office when media contact occurs. The Agency's Communication Office will assist the County with an appropriate follow-up response for the media.
- e. A Disaster Preparedness Plan. The County shall ensure that it has a current disaster preparedness and Business Continuity Plan (BCP) on file with the Agency within 30

days of the effective date of this Agreement. If County substantively changes the BCP, County shall provide the Agency with a copy of the amended BCP within 30 days from the effective date of the changes.

- f. Performance Informed Decision Making. Agency has committed to building a system to incorporate performance informed decision making with respect to its residential program management activities. Agency is committed to working collaboratively to maintain the quality services/programming offered to OYA youth. Agency's Youth Reformation System (YRS) quantifies program effectiveness and aligns programming with youth needs. Agency will be working with County to use the existing program measures including BRS Contract Compliance reviews and Youth Reformation System tools in on-going program management and contracting decisions.
- g. Agency has moved from a paper-based referral system to an electronic web-based system that is integrated with the Juvenile Justice Information System. The County shall use the Juvenile Provider Access System for documenting referrals and communicating placement decisions to the JPPO. The Agency may adopt rule changes, and provide instructions about changes in the referral, reporting, and other processes to accommodate the system changes. The parties understand that this Agreement may be further amended to accommodate the system changes. County shall provide information about its program(s), and IT readiness to Agency upon request as part of ongoing system improvement.
- h. County shall develop a policy to reflect the voluntary nature of the BRS placements into its facilities.
- i. Criminal Records Check. County shall ensure that criminal records checks under OAR 416-335-0030 are updated every five years.

2. COMPENSATION.

2.1 METHOD OF PAYMENT FOR SERVICES.

2.1.1 Average Daily Population

County agrees to work with Agency to maintain an ADP, aggregated monthly, of the number of OYA BRS Clients in each program as follows:

BRS Program	ADP
Exhibit A – BRS Basic Residential– Josephine County	3
Exhibit B - BRS Community Step-Down – Josephine County	Shared with ADP in Exhibit A

The parties recognize that in order to meet the contracted capacity, County may be required at times to serve more OYA BRS Clients than the ADP, up to the licensed capacity, in order to offset times when fewer OYA BRS Clients are served.

2.2 The total not to exceed amount available for payment to County is as follows:

Section 2.2.1 Services	\$346,557.15
Section 2.3 Authorized Reimbursement	\$630.00
Total Not to Exceed Amount for this Agreement	\$347,187.15

County understands and agrees that the amount paid under this Agreement may be reduced by OYA as a result of Legislative action or executive order. OYA will provide County with written notice of any such reduction and the Agreement will be amended to reflect that reduction. If County refuses to sign the amendment to the Agreement that reflects the reduction, County understands OYA may be forced to terminate the Agreement. Notwithstanding any other provision of this Agreement, this subsection takes precedence over all other provisions of this Agreement including all Exhibits.

2.2.1 As consideration for the services provided by the County under this Agreement, the Agency, subject to the provisions of ORS 293.462 (payment of overdue account charges) and the terms and conditions of this Agreement, will pay to the County by warrant(s) an amount not to exceed the amount for services specified in section 2.2.

- a. Agency will pay County for Billable Care Days and Absent Days as provided in OAR 416-335-0090. Agency will pay County at the rates set forth in OAR 416-335-0090 Exhibit 1 for the BRS Type of Care and Placement Model listed in each Exhibit.
- b. Other terms
 - i. If the County allocates any indirect costs to this Agreement, the County will make available to the Agency, upon request, a written cost allocation plan covering the handling and distribution of indirect costs. If all costs are direct costs to this Agreement, no cost allocation plan is required. In no event shall this subsection be construed to allow the County to require the Agency to pay any indirect costs allocation to this Agreement by County.
 - ii. If, as a result of County's neglect or misconduct, Agency terminates an OYA BRS Client's placement with County in accordance with this Agreement, the County shall not be entitled to any compensation under this Agreement with respect to such OYA BRS Client from and after the date of such termination.

2.2.2 BASIS OF PAYMENT FOR SERVICES.

Monthly progress payments for completed Services. Agency shall pay County monthly progress payments upon Agency's approval of County's invoice submitted to Agency for completed Services and delivered Goods, but only after Agency has determined that County has completed, and Agency has accepted the completed Services and Agency has accepted the delivered goods in accordance with section 1.3.

2.3 EXPENSE REIMBURSEMENT.

- a. Agency will not reimburse County for any expenses under this Agreement except for a clothing allowance as follows:
 - i. County shall ensure that each OYA BRS Client has an adequate wardrobe as prescribed by the OYA Youth Sub-Care Clothing List/Authorization (Form YA 3070). At the start of each OYA BRS Client's placement with County, County shall make an initial assessment of OYA BRS Client's clothing and document the results on Form YA 3070. If there is a determined need for clothing based on the form YA 3070, County shall notify the OYA BRS Client's JPPO that a clothing authorization is needed. After County's request, the JPPO may approve a payment of **\$210.00** for each OYA BRS Client who is admitted to the County's program to be applied for the purchase of clothing for the OYA BRS Client. The County shall maintain records and copies of receipts and invoices to document the purchase of the clothing for the OYA BRS Client, and shall permit OYA inspection of these documents upon request. The JPPO has the discretion to approve or disallow the County's request for payment.
- b. Total for Reimbursable Expenses. The total amount available to reimburse County for expenses authorized for reimbursement under this section 2.3 is specified in section 2.2 above.

2.4 GENERAL PAYMENT PROVISIONS.

- a. Agency's Payment. Agency shall pay County for Services performed and Goods delivered at the rates and prices specified in section 2. County shall look solely to Agency for payment of all amounts Agency owes to County. County shall not be compensated by any agency or department of State other than Agency for Services performed and Goods delivered.
- b. (reserved)
- c. Funds Available and Authorized; Payments. County understands and agrees that Agency's payment of amounts under this Agreement is contingent on Agency receiving funding, appropriations, limitations, allotments or other expenditure authority at levels sufficient to allow Agency, in the exercise of its reasonable administrative discretion, to make payments under this Agreement.

- d. The County agrees that the rates charged to the Agency for services to OYA BRS Clients under this Agreement shall not exceed rates for comparable services to youth not covered by this Agreement.
- e. County shall promptly remit to Agency any payment or reimbursement received by the County from a parent, or guardian, or any other personal entitlement received on behalf of any OYA BRS Client served under this Agreement.

2.5 INVOICES.

- a. County will receive monthly, the Agency's Invoice Estimate, which describes Services performed during the previous month and estimates payment for that Service. If County has not received an Invoice Estimate for Services provided in the previous month, County shall contact the Agreement Administrator for this Agreement. County shall work with OYA employees identified on the Invoice Estimate as primary worker for an OYA BRS Client to resolve any discrepancies regarding the invoice. Payment of any amount under this Agreement shall not constitute approval of the Services.
 - i. The Invoice Estimates shall be verified by the County and submitted to the Agency in accordance with the address on the invoice.
 - ii. Along with the verified invoice estimate, County shall also provide, in a format that meets the Agency's approval, an attendance sheet that clearly identifies the status of each OYA BRS Client enrolled to the County for each calendar day in the billing period. The required statuses include the days present in the facility, the days on home visit, the days on transitional visits to another provider, and the days billed as Absent Days. Along with the attendance sheet, the County shall provide documentation showing the written authorization from the OYA BRS Client's JPPO and the Community Resources Manager allowing the County to bill the Agency at an Absent Day rate for each calendar day listed as an Absent Day.
- b. If payments to County by the Agency under this Agreement, or under any other Agreement between the County and the Agency, are made in error or are found by the Agency to be excessive under the terms of this Agreement or the other Agreement, the Agency, after giving written notification to the County, may withhold payments due to County under this Agreement in such amounts, and over such periods of time, as are deemed necessary by the Agency to recover the amount of the overpayment. This subsection 2.5.b shall survive expiration or earlier termination of this Agreement and be fully enforceable thereafter.
- c. County must submit its final invoice to the Agency no later than 60 days after the termination or expiration date of this Agreement. The Agency shall be under no

obligation to pay for services not billed within 60 days after the termination or expiration date of this Agreement.

- d. County certifies with each invoice and reporting form submitted to Agency that the materials, services, or expenses included in the invoice have been furnished, rendered or expended pursuant to the terms of this Agreement; that they are as stated in the Agreement and the County has not previously requested payment for the item(s) from the Agency.

2.6 Audits

- a. As promptly as possible, but in no event later than 6 months after the end of each of the County's fiscal years in which County provides any Services under this Agreement, County shall have an independent certified public accountant audit County for that fiscal year. County shall maintain a copy of each such audit in its files. The County shall provide a copy of the audit to the Agency upon the Agency's request. If the audit shows that the County has failed to comply with the financial requirements of this Agreement in any material respect, Agency may, pursuant to section 3.13, terminate this Agreement.
- b. County agrees to maintain processes and quality assurance procedures to monitor the operation of the service program required under this Agreement to ensure compliance with the state's BRS program requirements as described in OAR 410-170-0000 through 410-170-0120. Agency, the Oregon Health Authority, federal officials, or any or all of the above, may periodically review, audit, or review and audit County's program to ensure compliance with these BRS requirements. If such reviews, audits, or both, find lack of compliance with these requirements and, as a result, the federal government requires the State to repay Medicaid funds previously paid to the State as reimbursement for services delivered under this Agreement, County shall repay Agency an amount equal to the funds repaid to the federal government through reduction of future payments made under this Agreement. If this Agreement is terminated or expires following such review, audit, or review and audit, those funds will be immediately due and payable to Agency on the date of the termination or expiration. If the Agreement has already expired or been terminated at the time of the review, audit, or review and audit, those funds will be immediately due and payable to Agency.
- c. In addition to audit provisions elsewhere in this Agreement, the Agency reserves the right to periodically audit and review the actual expenses of the County for the following purposes:
 - i. To document the relation between the established payments under this Agreement and the amounts spent by the County.

- ii. To document that the amounts spent by the County are reasonable and necessary to assure quality service.
- iii. To assure that the County's expenses are allowable in accordance with applicable Code of Federal Regulations (CFR) sections, including but not limited to 2 CFR Part 225 (OMB Circular A-87) or 2 CFR Part 230 (OMB Circular A-122) on Allowable Costs. In the event a periodic audit and review by the Agency shows that the County's expenses are not allowable under 2 CFR Part 225 or 2 CFR Part 230 on Allowable Costs in any material respect, Agency may terminate this Agreement.

3. GENERAL TERMS AND CONDITIONS.

3.1. INTELLECTUAL PROPERTY AND OPEN SOURCE (County)

Definitions. As used in this Agreement, the following terms have the meanings set forth below:

- a. "County Intellectual Property" means any intellectual property owned by County and developed independently from Services.
- b. "Open Source Elements" means any Work Product subject to any open source initiative certified license, including Work Product based upon any open source initiative certified licensed work.
- c. "Third Party Intellectual Property" means any intellectual property owned by parties other than Agency or County.
- d. "Work Product" means all Services and Goods County delivers or is required to deliver to Agency pursuant to this Agreement.

i. New Works. All intellectual property rights in the Work Product created by County under this Agreement shall be the exclusive property of Agency. All Work Product authored by County under this Agreement shall be deemed "works made for hire" to the extent permitted by the United States Copyright Act. To the extent Agency is not the owner of the intellectual property rights in such Work Product, County hereby irrevocably assigns to Agency any and all of its rights, title, and interest in such Work Product. Upon Agency's reasonable request, County shall execute such further documents and instruments reasonably necessary to fully vest such rights in Agency. County forever waives any and all rights relating to such Work Product created under this Agreement, including without limitation, any and all rights arising under 17 USC §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

ii. County Intellectual Property. If intellectual property rights in the Work Product are County Intellectual Property, County hereby grants to Agency an irrevocable, non-exclusive, perpetual, royalty-free license to use, make, reproduce, prepare derivative works based upon, distribute copies of, perform and display the County Intellectual Property, and to authorize others to do the same on Agency's behalf.

iii. Third Party Intellectual Property. To the extent County has the authority, County shall sublicense or pass through to Agency all Third Party Intellectual Property. County represents

and warrants that it has provided written disclosure to Agency of all Third Party Intellectual Property that must be independently licensed by Agency to fully enjoy the benefit of the Work Product. If County failed to provide such written disclosure, County shall secure on the Agency's behalf and in the name of the Agency, an irrevocable, non-exclusive, perpetual, royalty-free license to use, make, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Third Party Intellectual Property, and to authorize others to do the same on Agency's behalf.

iv. Open Source Approval and Notice. Any Open Source Elements in the Work Product must be approved in advance and in writing by Agency. If Agency approves the use of Open Source Elements, County shall:

- a. Notify Agency in writing that the Work Product contains Open Source Elements;
- b. Identify the specific portion of the Work Product that contain Open Source Elements; and
- c. Provide a copy of the applicable license for each Open Source Element to Agency.

3.2 OTHER REPRESENTATIONS AND WARRANTIES.

- a. All express and implied warranties that are applicable to goods under ORS Chapter 72 apply to the Goods delivered under this Agreement. County represents and further warrants that:
 - i. County has the authority to enter into and perform in accordance with this Agreement and that this Agreement, when executed and delivered, is a valid and binding obligation of County that is enforceable in accordance with its terms;
 - ii. 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 and perform Services in a timely, professional and workmanlike manner in accordance with standards applicable to County's industry, trade or profession;
 - iii. County is and shall be, at all times during the term of this Agreement, qualified, professionally competent, and duly licensed to perform Services; and
 - iv. When used as authorized by this Agreement, no Work Product infringes nor will Agency's use, duplication or transfer of the Work Product infringe any copyright, patent, trade secret or other proprietary right of any third party.
- b. The warranties specified in this section are in addition to, and not in lieu of, any other warranties provided. All warranties are cumulative and shall be interpreted broadly to give Agency the greatest warranty protection available.

3.3 COMPLIANCE WITH APPLICABLE LAWS AND STANDARDS.

County shall comply with all federal, state and local laws, regulations, and ordinances applicable to this Agreement or to County's obligations under this Agreement, as those laws, regulations and ordinances may be adopted or amended from time to time.

3.4 RESERVED.

3.5 TIME IS OF THE ESSENCE.

County agrees that time is of the essence in the performance of this Agreement.

3.6 FORCE MAJEURE.

Neither Agency nor County shall be responsible for any failure to perform or for any delay in the performance of any obligation under this Agreement caused by fire, riot, acts of God, terrorism, war, or any other cause which is beyond the breaching party's reasonable control. County shall, however, make all reasonable efforts to remove or eliminate the cause of County's delay or breach and shall, upon the cessation of the cause, continue performing under this Agreement. Agency may terminate this Agreement upon written notice to County after reasonably determining that the delay or breach will likely prevent successful performance of this Agreement.

3.7 RESERVED.

3.8 INDEPENDENT CONTRACTOR STATUS; RESPONSIBILITY FOR TAXES AND WITHHOLDING

- a. County shall perform all Services as an independent contractor. The Agency reserves the right (i) to determine and modify the delivery schedule for the Work and (ii) to evaluate the quality of the Work Product, however, the Agency may not and will not control the means or manner of County's performance. County is responsible for determining the appropriate means and manner of performing the Work.
- b. If County is currently performing work for the State of Oregon or the federal government, County by signature to this Agreement, represents and warrants that: County's Work to be performed under this Agreement creates no potential or actual conflict of interest as defined by ORS 244 and no statutes, rules or regulations of the state or federal agency for which County currently performs work would prohibit County's Work under this Agreement.
- c. 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 Agency, as those terms are used in ORS 30.265 or otherwise.
- d. County shall be responsible for all federal or state taxes applicable to compensation or payments paid to County under this Agreement and, unless County is subject to backup withholding, Agency will not withhold from such compensation or payments

any amount(s) to cover County's federal or state tax obligations. County is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation or payments paid to County under this Agreement, except as a self-employed individual.

3.9 CONTRIBUTION, DISPUTE RESOLUTION AND LIMITATION OF LIABILITIES

a. Contribution.

- i. 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.
- ii. 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.
- iii. 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.

b. 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.

- c. Limitation of Liabilities.** EXCEPT FOR LIABILITY OF DAMAGES ARISING OUT OF OR RELATED TO SECTION 3.9.a.i, SECTION 3.9.a.ii, AND SECTION 3.9.a.iii, 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.

3.10 WORKER'S COMPENSATION.

All employers, including County, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers Compensation coverage, unless such employers are exempt under ORS 656.126. County shall ensure that each of its Subcontractors complies with these requirements.

3.11 EVENTS OF BREACH.

- a. Breach by County. County breaches this Agreement if:
- i. County institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis;
 - ii. County no longer holds a license or certificate that is required for County to perform its obligations under this Agreement and County has not obtained the license or certificate within fourteen (14) calendar days after Agency delivers notice of breach to County or a longer period as Agency may specify in the notice; or

- iii. County commits any material breach of any covenant, warranty, obligation or certification under this Agreement, fails to perform its obligations under this Agreement within the time specified or any extension of that time, and County fails to cure the breach within fourteen (14) calendar days after Agency delivers notice of breach to County or a longer period as Agency may specify in the notice.
- b. Breach by Agency. Agency breaches this Agreement if:
- i. Agency fails to pay County any amount pursuant to the terms of this Agreement, and Agency fails to cure its failure to pay within fourteen (14) calendar days after County delivers notice of breach to Agency or a longer period as County may specify in the notice; or
 - ii. Agency commits any material breach of any covenant, warranty, or obligation under this Agreement, fails to perform its obligations hereunder within the time specified or any extension thereof, and Agency fails to cure the breach within fourteen (14) calendar days after County delivers notice of breach to Agency or a longer period as County may specify in the notice.

3.12 REMEDIES.

- a. State's Remedies. If County is in breach under section 3.11.a, then in addition to the remedies afforded elsewhere in this Agreement, State shall be entitled to recover for any and all damages suffered as the result of County's breach of this Agreement, including but not limited to direct and indirect damages. State may, at Agency's option, pursue any or all of the remedies available under this Agreement and at law or in equity, including, but not limited to:
- i. Termination of this Agreement under section 3.13.b.ii;
 - ii. Withholding payment of all amounts in County's invoices for Services that County is obligated to but has failed to deliver or perform within any scheduled completion dates or has performed inadequately or defectively;
 - iii. Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief; or
 - iv. Exercise of the right of setoff, and withholding of amounts otherwise due and owing to County in an amount equal to State's setoff right, without penalty.

These remedies are cumulative to the extent the remedies are not inconsistent, and State may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever. If it is determined for any reason that County was not in breach under section 3.11.a, the rights and obligations of the parties shall be the same as if this Agreement was terminated pursuant to section 3.13.b.i.

- b. County's Remedies. If Agency terminates this Agreement for convenience under section 3.13.b.i, or if Agency is in breach under section 3.11.b and whether or not

County elects to exercise its right to terminate this Agreement under section 3.13.c, County's sole remedy is one of the following, as applicable:

- i. For Services compensable on an hourly basis, a claim against Agency for unpaid invoices, hours worked but not yet invoiced, and authorized expenses for Services completed and accepted by Agency less any claims State has against County.
- ii. For deliverable-based Services, a claim against Agency for the sum designated for completing the deliverable multiplied by the percentage of Services completed and accepted by Agency, less previous amounts paid and any claims State has against County.

If previous amounts paid to County for Services and Goods exceed the amount due to County under this section 3.12.b, County shall pay the excess amount to Agency immediately upon written demand.

- c. Attorney's Fees. Except for defense costs and expenses pursuant to section 3.9, neither Agency nor County is entitled to recover attorney's fees, court and investigative costs, or any other fees or expenses associated with pursuing a remedy for damages arising out of or relating to this Agreement.

3.13 TERMINATION.

- a. MUTUAL CONSENT. This Agreement may be terminated at any time by mutual written consent of the parties.
- b. Agency:
 - i. Agency may, at its sole discretion, terminate this Agreement for its convenience upon 30 days written notice by Agency to County.
 - ii. Agency may, in its sole discretion, terminate this Agreement, immediately upon notice to County, or at a later date as Agency may establish in the notice, upon the occurrence of any of the following events:
 1. Agency fails to receive funding, appropriations, limitations, allotments or other expenditure authority at levels sufficient to pay for Services;
 2. Federal or state laws, regulations, or guidelines are modified or interpreted in a way that either the purchase of Services by Agency under this Agreement is prohibited, or Agency is prohibited from paying for Services from the planned funding source; or
 3. County is in breach under section 3.11.a.

County shall stop performance under this Agreement as directed by Agency in any written notice of termination delivered to County under this section 3.13.b.

- c. County: County may terminate this Agreement (i) for its convenience upon 90 days written notice by County to Agency or at such later date as County may establish in

the notice or (ii) upon 30 days written notice or at such later date as County may establish in the notice if Agency is in breach under section 3.11.b.

3.14 ACCESS TO RECORDS.

County shall retain, maintain, and keep accessible all records relevant to this Agreement ("Records") for minimum of six (6) years, or a longer period as may be required by applicable law, following Agreement termination or full performance, the period required by applicable law following Agreement termination or full performance, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever ending is later. County shall maintain all financial Records in accordance with generally accepted accounting principles. During this Record-retention period, County shall permit State, its duly authorized representatives, and the federal government access to the Records at reasonable times and places for purposes of examination and copying.

3.15 NOTICES.

All notices required under this Agreement shall be in writing and addressed to the party's authorized representative. For State, the authorized representative is the Agency Agreement Administrator identified in section 6. County's authorized representative is the contact person identified in section 6. Mailed notices are deemed received five (5) days after the post mark date when properly addressed and deposited prepaid into the U.S. postal service. Faxed notices are deemed received upon electronic confirmation of successful transmission to the designated fax number. Notices delivered by personal delivery are deemed received when delivered to the address specified for the receiving party's authorized representative. County shall make notices and other communications regarding OYA BRS Clients required to be made to Agency in a format and manner approved by Agency.

3.16 GOVERNING LAW.

The Agreement is governed by and construed in accordance with the laws of State, without regard to principles of conflicts of laws. To the extent not modified by the terms of this Agreement, the Uniform Commercial Code as codified in ORS Chapters 71 and 72 governs the Goods sold under this Agreement.

3.17 VENUE; CONSENT TO JURISDICTION.

Any claim, action, suit or proceeding (collectively, "Proceeding") between State and County that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of State for Marion County; provided, however, if a Proceeding must be brought in a federal forum, then unless otherwise

prohibited by law, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. COUNTY HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF THESE COURTS AND WAIVES ANY OBJECTION TO VENUE IN THESE COURTS AND ANY CLAIM THAT THE FORUM IS AN INCONVENIENT FORUM. Nothing in these provisions shall be construed as a waiver of State's sovereign or governmental immunity, whether derived from the Eleventh Amendment to the United States Constitution or otherwise, or a waiver of any defenses to Proceedings or jurisdiction based thereon.

3.18 SUBCONTRACTS; ASSIGNMENT; SUCCESSORS.

- a. **SUBCONTRACTS.** County shall not enter into any subcontracts for any of Services required under this Agreement without Agency's prior written consent. With regard to any permitted subcontractors, County shall comply with Appendix 1, which by this reference is hereby incorporated into this Agreement. In addition to any other provisions Agency may require, County shall include in any permitted subcontract provisions to ensure that Agency will receive the benefit of subcontractor's performance as if the subcontractor were County with respect to sections 1.3, 3.1, 3.2, 3.5, 3.14, 3.16, 3.18, and Appendix 1. Agency's consent to any subcontract shall not relieve County of any of its duties or obligations under this Agreement.
 - i. In order for the County to receive approval to enter into subcontracts, the County shall submit to the Agency a copy of the boilerplate provisions used in any subcontracts entered into by County under this Agreement. If County substantively changes the boilerplate provisions used in subcontracts entered into by County under this Agreement, County shall provide the Agency with a copy of the amended boilerplate provisions within 30 days from the effective date of the changes to the boilerplate provisions. Agency's failure to take any action based on any provision in such a subcontract shall not constitute a waiver by Agency of the right to enforce this or any other provision.
- b. County shall not assign, delegate or transfer any of its rights or obligations under this Agreement without Agency's prior written consent. Agency's written consent does not relieve County of any obligations under this Agreement, and any assignee, transferee, or delegate is considered County's agent.
- c. The provisions of this Agreement are binding upon, and inure to the benefit the parties and their respective successors and permitted assigns, if any.

3.19 THIRD PARTY BENEFICIARIES.

State and County are the only parties to this Agreement and are the only parties entitled to enforce the terms of this Agreement. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right not held by or made

generally available to the public, whether directly, indirectly or otherwise, to third persons unless the third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement. Agency is an intended beneficiary of the terms of this Agreement.

3.20 SEVERABILITY.

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

3.21 COUNTERPARTS.

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

3.22 INTEGRATION AND MERGER.

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

3.23 AMENDMENTS; WAIVER.

This Agreement may be amended to the extent permitted by the solicitation, if any, applicable statutes and administrative rules. No waiver, consent, or amendment of terms of this Agreement shall bind either party unless in writing and signed by Agency and County, and all necessary approvals have been obtained. Waivers and consents shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

3.24 SURVIVAL.

In addition to all provisions which by their nature extend beyond Agreement termination or full performance, the following provisions shall remain in effect beyond any Agreement termination or full performance: sections 1.4, 2.4, 2.6, 3.1, 3.2, 3.9, 3.12, 3.14, 3.16, 3.17, 3.19, and 3.24.

4. INSURANCE. (RESERVED)

5. AGENCY INFORMATION SECURITY.

5.1 AGENCY INFORMATION ASSETS.

- a. If Services performed or Goods delivered under this Agreement require County to have access to or use of any Agency computer system or other Agency Information Asset for which Agency imposes security requirements, County shall comply and require subcontractors to comply with the information security requirements imposed under this section. "Information Asset" means all confidential information in any form (e.g., written, verbal, oral or electronic) which Agency determines requires security measures, including confidential information created by Agency, gathered for Agency, or stored by Agency for external parties.
- b. All requirements imposed on County under this section 5 shall also apply to its officers, employees, agents and subcontractors that have access to any Agency information computer system or other Agency Information Asset, and County shall include these requirements in any subcontract that may provide such access by a subcontractor, its officers, employees or agents to any Agency computer system or other Agency Information Asset. County shall:
 - i. Cooperate with Agency in identifying Information Assets that will be utilized in the performance of Services or for the delivery of Goods and applicable security measures that will be undertaken to protect the Information Assets, and provide updated information to Agency within fourteen (14) calendar days of the date such information changes for any reason;
 - ii. Implement security measures that reasonably and appropriately provide administrative, physical and technical safeguards that protect the confidentiality, integrity and availability of the Information Assets that it creates, receives, maintains or transmits on behalf of Agency. County's security measures must be documented in writing and be available for review by Agency upon request. Agency's review of the reasonableness of security measures, as well as County's compliance with Agency's assigned access control or security requirements, will take into account County's physical, administrative, and technical capabilities related to security measures and the potential risk of unauthorized use or disclosure of Information Assets by County, its officers, employees, agents or subcontractors.
 - iii. Prevent any unauthorized access to or disclosure of Agency's information systems and Information Assets.
 - iv. Take necessary actions to comply with Agency's determinations of the level of access that may be granted, as well as changes in level of access, or suspension or termination of access as determined by Agency.

- v. Keep any Agency assigned access control requirements such as identification of authorized user(s) and access control information in a secure location until access is terminated; monitor and securely maintain access by County and its agents or subcontractors in accordance with security requirements or access controls assigned by Agency; and make available to Agency, upon request, all information about County's use or application of Agency access controlled computer systems or Information Assets.
- vi. Report to Agency any privacy or security incidents by County, its officers, employees, agents or subcontractors that compromise, damage, or cause a loss of protection to Agency Information Assets. County shall report in the following manner:
 - 1. Report to Agency in writing within five (5) business days of the date on which County becomes aware of such incident; and
 - 2. Provide Agency the results of the incident assessment findings and resolution strategies.

County shall comply with Agency requests for corrective action concerning a privacy or security incident, and with laws requiring mitigation of harm caused by the unauthorized use or disclosure of confidential information, if any.

- c. If Agency determines that County's security measures or actions required under section 5.a are inadequate to address the security requirements of Agency, Agency will notify County. Agency and County may meet to discuss appropriate security measures or action. If security measures or corrective actions acceptable to Agency cannot be agreed upon, Agency may take such actions as it determines appropriate under the circumstances. Actions may include but are not limited to restricting access to computer systems or Information Assets, or Agency amending or terminating the Agreement.
- d. Agency may request additional information from County related to security measures, and may change, suspend or terminate access to or use of an Agency computer system or Information Assets by County, its officers, employees, agents or subcontractors.
- e. Wrongful use of Agency computer systems, wrongful use or disclosure of Information Assets by County, officers, its employees, agents or its subcontractors may cause the immediate suspension or revocation of any access granted through this Agreement, in the sole discretion of Agency. Agency may also pursue any other legal remedies provided under the law.

6. SIGNATURES (County)

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

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

I hereby certify and affirm I am eligible and authorized to sign this agreement on behalf of the County.

AGENCY: STATE OF OREGON, acting by and through its Oregon Youth Authority

By: _____ Date: _____

By: _____ Date: _____

Title: _____

Amber Forster,
Chief Financial Officer

Tax ID Number: _____

Mailing Address: 530 Center St. NE, Suite 500
Salem, Oregon 97301-3740

Mailing Address: _____

Facsimile: (503) 373-7921

Facsimile: _____

Reviewed by OYA Contracts Administrator:

By: Monica Moran via email Date: 1/18/18

Approved as to Legal Sufficiency by the Attorney General's Office:

Reviewed by OYA Contracts Specialist:

By: Susan Amesbury via email Date: 1/18/18

By: _____ Date: _____

Agency Agreement Administrator: **Monica Moran**
Address: 530 Center St NE, Suite 500, Salem, Oregon 97301
Contact Telephone Number: (503) 931-9561
Fax Number: (866) 603-7174
E-Mail Address: Monica.Moran@oya.state.or.us

Should a change in the Agency's Agreement Administrator become necessary, Agency will notify County of such change. Such change shall be effective without the necessity of executing a formal amendment to this Agreement.

OREGON YOUTH AUTHORITY

EXHIBIT A: BRS Basic Residential – Josephine County Turning Point

A. GENERAL DESCRIPTION OF PROGRAM:
Agency is contracting with the County for the following BRS Type of Care and Placement Model for BRS Clients with the following characteristics:
B. BRS TYPE OF CARE and PLACEMENT MODEL:
BRS Basic Residential (Residential Care)
C. POPULATION TO BE SERVED:
Contractor shall offer services to youth offenders who are committed to OYA and are between the ages of 12-25. The Contractor's preferred age range is 12-17. Contractor shall accept referrals statewide but preference will be given to Josephine, Jackson, Douglas, Klamath, Curry and Coos counties.
D. CHARACTERISTICS OF OYA BRS CLIENTS SERVED UNDER THIS AGREEMENT:
Youth offenders served under this Contract include youth offenders who exhibit any or all of the following characteristics: <ul style="list-style-type: none">• Status offense behavior:<ul style="list-style-type: none">○ Runaway○ Out of parental control○ Extended truancy and other school problems; both academic and behavioral• Delinquent anti-social behavior:<ul style="list-style-type: none">○ Law Violations (except as noted in exclusions below).○ Suspended commitment to Youth Correctional Facility• Personality/character disorders including:<ul style="list-style-type: none">○ Passive-impulse○ Passive-dependent○ Passive-aggressive○ Abuse reactive○ Depression prone• ADHD• Oppositional defiant/conduct disorder• Drug and alcohol use and abuse• Sexual reactivity• Emotional Dysregulation
E. COUNTY MAY REFUSE TO ACCEPT OYA BRS CLIENTS WHO EXHIBIT ONE OR MORE OF THE FOLLOWING CHARACTERISTICS:
<ul style="list-style-type: none">• Youth who are unable to participate in the program due to intellectual and developmental disabilities. This could include youth with cerebral palsy, epilepsy, autism or IQ's 70 or below.• Psychotic youth• Actively homicidal or suicidal youth• Fire Setting Behaviors Exceptions to admission criteria may be considered on a case-by-case basis. Contractor may admit youth offenders outside of normal criteria only with OYA contract administrator approval.
F. SPECIAL PROGRAM REQUIREMENTS: NONE

OREGON YOUTH AUTHORITY

EXHIBIT B: BRS Community Step-Down – Josephine County

A. GENERAL DESCRIPTION OF PROGRAM:
Agency is contracting with County for the following BRS Type of Care and Placement Model for BRS Clients with the following characteristics:
B. BRS TYPE OF CARE and PLACEMENT MODEL:
Community Step-Down (Residential Care)
C. POPULATION TO BE SERVED:
County shall offer services to youth offenders who have the following characteristics: <ul style="list-style-type: none">• are between the ages of 12 and 25 with a preferred age range of 12-17;• These youth may not be eligible for independent living services; and• youth who are ready for graduated practice in the community and continue to need program support.

APPENDIX 1 - SUBCONTRACTOR REQUIREMENTS

1. 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.

2. Subcontractor Insurance Requirements

A. GENERAL.

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 Agency. 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 which the County directly enters into a contract. It does not include a subcontractor with which the contractor enters into a contract.

B. TYPES AND AMOUNTS.

i. WORKERS COMPENSATION. Insurance in compliance with ORS 656.017, which requires all employers that employ subject workers, as defined in ORS 656.027, to provide workers' compensation coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Employers Liability insurance with coverage limits of not less than \$500,000 must be included.

ii. PROFESSIONAL LIABILITY.

Required by Agency Not required by Agency.

Professional Liability Insurance covering any damages caused by an error, omission or any negligent acts related to the services to be provided under the Subcontract, with limits not less than the following, as determined by the Agency:

Per occurrence limit for any single claimant:

January 18, 2018 and thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, sections 3 and 5 (Senate Bill 311).

Per occurrence limit for multiple claimants:

January 18, 2018 and thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, sections 3 and 5 (Senate Bill 311).

iii. COMMERCIAL GENERAL LIABILITY.

Required by Agency Not required by Agency.

Commercial General Liability Insurance covering bodily injury, death, and property damage in a form and with coverages that are satisfactory to the Agency. This insurance shall include personal injury liability, products, and completed operations. Coverage shall be written on an occurrence basis, with limits not less than the following amounts, as determined by the Agency:

Bodily Injury/Death:

Per occurrence limit for any single claimant:

January 18, 2018 and thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 3 (Senate Bill 311).

Per occurrence limit for multiple claimants:

January 18, 2018 and thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 3 (Senate Bill 311).

AND

Property Damage:

- \$100,000.00 Per occurrence limit for any single claimant; and
- \$500,000.00 Per occurrence limit for multiple claimants

iv. AUTOMOBILE LIABILITY INSURANCE: AUTOMOBILE LIABILITY.

- Required by Agency Not required by Agency.

Automobile Liability Insurance covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for "Commercial General Liability" and "Automobile Liability"). Automobile Liability Insurance must be in not less than the following amounts, as determined by the Agency:

Bodily Injury/Death:

- Per occurrence limit for any single claimant:

January 18, 2018 and thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 3 (Senate Bill 311).

- Per occurrence limit for multiple claimants:

January 18, 2018 and thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 3 (Senate Bill 311).

AND

Property Damage:

- \$100,000.00 Per occurrence limit for any single claimant; and
- \$500,000.00 Per occurrence limit for multiple claimants

v. POLLUTION LIABILITY.

- Required by Agency Not required by Agency.

vi. EXCESS/UMBRELLA INSURANCE.

A combination of primary and excess/umbrella insurance is acceptable. If using excess/umbrella insurance to meet the minimum insurance requirement, the certificate must include a list of the policies that fall under the excess/umbrella insurance. Sample wording is "The Excess/Umbrella policy is excess over General Liability, Auto Liability, etc."

- C. 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.

- D. "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 Agency may grant approval of the maximum "tail" coverage period reasonably available in the marketplace. If Agency approval is granted, the contractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.
- E. 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).
- F. 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.



Josephine County Board of Commissioners

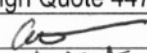
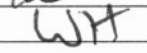
AGENDA REQUEST FOR BOARD OF COMMISSIONERS

Agenda Requests are due by NOON on Monday of the week scheduled for Administration Workshop
Requests received after that time will be placed on the Administration Workshop agenda for the following week

If sending documents electronically – send to both
rperrin@co.josephine.or.us and wwatkins@co.josephine.or.us

REVISED JUNE 2017

Date Submitted to BCC	February 2, 2018
Administration Workshop Meeting Date (Thursday)	February 1, 2018
WBS Meeting Date (Wednesday) Note: Second Wednesday of the month is evening session	February 8, 2018

AGENDA TITLE: County Information Systems – Storage Area Network acquisition	
Department/Contact Person (Include Title and Ext. #)	John McCafferty – Technology Director
Presenter (Include Name and Title)	John McCafferty
Background information	County IT created a Request for Proposals (attached) in December 2017. There were four responses. The winning bid is Xiologix, a vendor for Pure Storage Arrays. It scored highest (lowest 10 year carrying cost) in cost when comparing like technologies, and highest in hardware/software support of the scope of work required. Pure Storage scores very high in technology review charts and was highly rated by the references we obtained, including a review offered by a competing RFP submission.
Action you are requesting from the Board	Sign Quote 4477
Reviewed by Finance Director (If yes, Finance's signature required)	
Reviewed by Legal Counsel (If yes, Legal's signature required)	
Reviewed by Information Technology (If yes, IT's signature required)	
Total Revenue, Cost, or Pass-Thru Funds to the County	\$112,833.75
Notes or Special Instructions to BCC Staff	

Title of Document(s) Submitted <u>All exhibits must be clearly marked</u>	Number of original documents submitted	Are all signatures on the documents? Y/N or BCC only	Are additional signatures needed? Y/N	Will a state or federal agency be signing the document? Y/N	Will additional signatures be received electronically? Y/N
Request for Proposals	1	N/A			
Quote 4477	1	BCC only	N	N	N

DOCUMENT DISTRIBUTION: Board staff is required to submit one fully executed document with original Board signatures for recording in the Board's Journal in the County Clerk's Office unless otherwise specified under Notes or Special Instructions to BCC Staff.

- **All Signatures:** If all signatures are obtained, one fully executed original document will be filed in the Board's Journal in the County Clerk's Office and all other originals will be returned to the contact person. If only one original was submitted, an electronic copy will be returned to the contact person.
- **Additional Signatures Needed on Original Documents:** Board staff will retain one document with original Board signatures and return the additional originals to the contact person to obtain the remaining signature(s). Upon department receipt of the fully executed

XIOLOGIX LLC

8050 SW Warm Springs Street, Suite 100 ♦ Tualatin, OR 97062
Phone: (503) 691-4364 ♦ Fax: (503) 612-9260



Quote

Number: 4477
Date: 02/01/2018

Email Orders to: inside_sales@xiologix.com

Bill To: Ship To:

Josephine County IT
Attn: John McCafferty
500 NW 6th Street., Dept 7
Grants Pass, OR 97526

Josephine County IT
Attn: John McCafferty
500 NW 6th Street., Dept 7
Grants Pass, OR 97526

Quote Contact:

Phone: (541) 474-5230

Sales Rep: Jeff Cook E-Mail: jcook@xiologix.com Phone: (503) 691-4364 272

Table with 6 columns: Qty, Description, UOM, MSRP, Sell, Total. Includes item details for Pure Storage M20R2 38/0 All Flash Array and associated services.

Prices are firm until: 2/16/2018 Terms: Net 30

Please complete all information below to ensure the timely delivery of your order:

Preferred Shipping Method: Ground 2nd Day Overnight
Date Needed:
Customer Reference/Purchase Order:
Authorized Purchasing Signature: Date:
Print Name: Title:

Remit To: Xiologix, PO Box 1880, Tualatin, OR 97062

- Terms and Conditions:
1. Prices do not include shipping charges. All shipping charges are FOB origin and will be added at time of invoice.
2. Prices do not include tax. All applicable sales taxes will be added at time of invoice.
3. Payment terms are Check, Cash, Visa, MasterCard, American Express or COD.
4. All quotes and proposals are calculated using US Dollars.
5. Quotes are valid until the date above (Prices are firm until). Xiologix reserves the right to adjust prices at any time according to manufacturer price

XIOLOGIX LLC

8050 SW Warm Springs Street, Suite 100 ♦ Tualatin, OR 97062
Phone: (503) 691-4364 ♦ Fax: (503) 612-9260



Quote

Number: **4477**

Date: 02/01/2018

changes. In the event that the expiration date has been exceeded, please contact your Account Representative for an updated quote.

REQUEST FOR PROPOSALS
Storage Area Network
Josephine County

The Josephine County Information Technology Department is accepting proposals for the provision of a Storage Area Network to replace our existing infrastructure of approximately 48 TBs of useable space with a solution that meets the needs of the current growth pattern of 20% per year for the next five years that allows for additional drive capacity.

1. **General Information:** Josephine County's Information Technology Department is responsible for the data storage of approximately 350 employees and 60 virtual hosts and SQL databases. The department utilizes Promise and Equallogic hardware with a traditional configuration of spinning drives acting as storage for 10 hosts in a virtual environment.

2. **Scope of Work:** The Successful Proposer will be required to provide the equipment, installation, training, maintenance, and technical support for a modern solution. The solution will need to address the following:
 - Redundant Storage Controllers – 10GBase-T Interface
 - Redundant Power supplies
 - Self-Encrypting Hard Drives with key management system to meet the CJIS requirements for encryption at rest for CJIS data.
 - Automated storage tiering or read/write caching, leveraging a hybrid environment of flash/ssd, and spinning drives. Alternatively a 100% flash/ssd environment.
 - Software management and reporting tools

3. **Content of Proposals:** Proposers must provide the following information in the following sequence:
 1. Description of Hardware and Software: Describe the proposed hardware and software and identify how they will address the items listed under the Scope of Work. Describe the level of maintenance and tech support which will be available.
 2. Information of Proposer: Describe the level of support and history in this sector.
 3. References: Provide a list of current and recent clients who utilize the same or similar hardware and software and describe the services performed, and number of years providing such services. Provide a list of two (2) clients who may be contacted for references, along with contact names, telephone numbers, and email addresses.
 4. Other: Include any other information you consider pertinent.
 5. Implementation Schedule: Provide a proposed schedule for the installation and the proposed Go Live date.
 6. Cost Proposal: Provide the costs for the equipment, installation, training, maintenance, and technical support for at least three years.

4. **Submission of Proposals:** All Proposals must be submitted in a sealed envelope, or mailed electronically in .pdf format, no later than **Thursday, December 21 at 5:00 p.m. PST** at the following address:

Attn: John McCafferty
Josephine County IT
500 NW 6th St., Dept. 7
Grants Pass, OR 97526
jmccafferty@co.josephine.or.us

There will be no formal opening of proposals. Submissions by fax will not be accepted. Proposals received after December 21 will not be accepted or opened.

5. **Evaluation of Proposals:** The County will award the contract based on the following factors:

Cost	30%
Hardware and Software that supports the Scope of Work	50%
Ongoing Assistance, Maintenance, and Tech Support	10%
References and Experience	10%

6. **Reservation of Rights:** The County reserves the rights: a) to amend this Request for Proposal; b) to extend the deadline for submitting proposals; c) to waive minor irregularities, informalities, or failures to conform to this Request for Proposal if the County determines that such waiver is in the best interest of the County; d) to award one or more contracts, by item or task, or groups of items or tasks, if multiple awards are determined by the County to be in the public interest; and e) to reject, for any reason and without liability therefor, any and all Proposals and to cancel this procurement at any time, in accordance with ORS 279B.100, if such cancellation is deemed to be in the best interest of the County.
7. **Responsibility Inquiry:** The County reserves the right to investigate and evaluate, at any time prior to award and execution of the Contract, the apparent successful Proposer's responsibility to perform the Contract. Submission of Proposals shall constitute approval for the County to obtain any information the County deems necessary to conduct the evaluation.
8. **Contact Person:** Any questions should be submitted in writing and emailed to John McCafferty at jmccafferty@co.josephine.or.us



Josephine County Board of Commissioners

AGENDA REQUEST FOR BOARD OF COMMISSIONERS

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rperrin@co.josephine.or.us and wwatkins@co.josephine.or.us
REVISED JUNE 2017

Date Submitted to BCC	1/26/18
Administration Workshop Meeting Date (Thursday)	1/31/18
WBS Meeting Date (Wednesday) Note: Second Wednesday of the month is evening session	2/7/18

AGENDA TITLE:	
Board Order 2018 XXX ^{.004} In The Matter of the Re-Adoption of the Josephine County Investment Policy	
Department/Contact Person (Include Title and Ext. #)	Eve Arce Treasurer 3176
Presenter (Include Name and Title)	Eve Arce Treasurer
Background information	Section 8 of the Josephine County Investment Policy reads: "This Investment Policy will be formally adopted by the Josephine County Board of Commissioner, and will be re-adopted annually even if there are no changes" There is no changes in the investment policy previously adopted February 22, 2017.
Action you are requesting from the Board	Approval of the 2018 Investment Policy
Reviewed by Finance Director (If yes, Finance's signature required)	N/A
Reviewed by Legal Counsel (If yes, Legal's signature required)	N/A
Reviewed by Information Technology (If yes, IT's signature required)	N/A
Total Revenue, Cost, or Pass-Thru Funds to the County	\$
Notes or Special Instructions to BCC Staff	Please email signed BO to earce@co.josephine.or.us

Title of Document(s) Submitted <u>All exhibits must be clearly marked</u>	Number of original documents submitted	Are all signatures on the documents? Y/N or BCC only	Are additional signatures needed? Y/N	Will a state or federal agency be signing the document? Y/N	Will additional signatures be received electronically? Y/N
2018 Josephine County Investment Policy	1		N/A	N/A	N/A

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- **Additional Signatures Needed on Original Documents:** Board staff will retain one document with original Board signatures and return the additional originals to the contact person to obtain the remaining signature(s). Upon department receipt of the fully executed document, one fully executed original document must be returned to Board staff for recording in the Board's Journal in the County Clerk's Office.
- **Additional Signatures Needed on Electronic Documents:** Board staff will retain one document with original Board signatures and return an electronic copy to the contact person to obtain the remaining signature(s). Upon department receipt of the fully executed electronic document, one fully executed electronic document must be returned to Board staff for recording in the Board's Journal in the County Clerk's Office.

**BEFORE THE BOARD OF COUNTY COMMISSIONERS FOR JOSEPHINE COUNTY
STATE OF OREGON**

In the Matter of the Re-Adoption of the)
Josephine County Investment Policy) **Order No. 2018-004**
)
) (Replaces Order No. 2017-008)

WHEREAS, on May 9, 2007, the Board of Commissioners adopted the Josephine County Investment Policy by Order 2007-030, and re-adopted it, unchanged, by Order 2008-008.

WHEREAS, on February 11, 2009, the Board of Commissioners re-adopted the Josephine County Investment Policy by Order 2009-03, with changes to Sections VIII, X, XI, XIII, and Addendum A of the Investment policy, and

WHEREAS, on July 30, 2010, the Board of Commissioners re-adopted, unchanged, the Josephine County Investment Policy by Order 2010-093, and

WHEREAS, on January 25, 2012, the Board of Commissioners re-adopted the Josephine County Investment Policy by Order 2012-07, with changes to Sections III, X, XI, and Addendum A of the Investment policy, and

WHEREAS, the Josephine County Treasurer previously submitted the Josephine County Investment Policy to the Oregon Short Term Fund Board for review at their official meeting on March 13, 2007; and

WHEREAS, the 2009 changes and the subsequent changes in 2012 do not require a review by the Oregon Short Term Fund Board, and

WHEREAS, Section VIII of the Josephine County Investment Policy requires annual re-adoption of the investment policy, even if there are no changes, and

IT IS HEREBY ORDERED that the Josephine County Board of Commissioners hereby approves and re-adopts the Josephine County Investment Policy, attached hereto as Exhibit A.

DONE and DATED this 7th day of February, 2018

JOSEPHINE COUNTY
BOARD OF COMMISSIONERS

Daniel E. DeYoung, Chair

Lily N. Morgan, Vice-Chair

Simon G. Hare, Commissioner

Josephine County Investment Policy

(Re-adopted February 7, 2018)



EXHIBIT A – February 7, 2018
Prepared by Eva L. I. Arce, Treasurer

Josephine County Investment Policy

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- I. Objectives
- II. Scope
- III. Standards of Care
- IV. Safekeeping and Custody
- V. Accounting Method
- VI. Internal Controls
- VII. Reporting Requirements
- VIII. Investment Policy Adoption
- IX. Qualified Financial Institutions
- X. Suitable and Authorized Investments
- XI. Portfolio Diversification
- XII. Bids and Offers
- XIII. Collateralization
- XIV. Performance Indicators
- XVI. Additional Documents

Josephine County Investment Policy

I. Objectives:

The primary objectives of investment activities shall be safety, liquidity, and yield.

1. **Safety:** Safety of principal is the foremost objective of the investment program. Investments shall be undertaken in a manner that seeks to ensure the preservation of capital in the overall portfolio. The objective will be to mitigate credit risk and interest rate risk.
 - a. Credit Risk: Josephine County will minimize credit risk, the risk of loss due to the financial failure of the security issuer or backer, by:
 - Limiting exposure to poor credits and concentrating the investments in the safest types of securities.
 - Pre-qualifying the financial institutions, broker/dealers, intermediaries, and advisors with which Josephine County will do business.
 - Diversifying the investment portfolio so that potential losses on individual securities will be minimized.
 - Actively monitoring the investment portfolio holdings for ratings changes, changing economic/market conditions, etc.
 - b. Interest Rate Risk: Josephine County will minimize the risk that the market value of securities in the portfolio will fall due to changes in general interest rates, by:
 - Structuring the investment portfolio so that securities mature to meet cash requirements for ongoing operations, thereby avoiding the need to sell securities on the open market prior to maturity.
 - Investing operating funds primarily in shorter-term securities or short-term investment pools.
 - Diversifying the portfolio by maturity dates to mitigate the impact of reinvestment risk, i.e. "laddering" the maturity dates.
2. **Liquidity:** The investment portfolio shall remain sufficiently liquid to meet all operating requirements that may be reasonably anticipated. This is accomplished by structuring the portfolio so that securities mature concurrent with cash needs to meet anticipated demands (static liquidity). A reasonable portion of the portfolio should be maintained in the Oregon Short-Term Fund and collateralized commercial bank interest bearing accounts which offer next-day liquidity. Furthermore, since all possible cash demands cannot be anticipated, the portfolio should consist largely of securities with active secondary or resale markets (dynamic liquidity).
3. **Yield:** The investment portfolio shall be designed with the objective of attaining a market rate of return throughout budgetary and economic cycles, taking into account the investment risk constraints and liquidity needs. Return on investment is of secondary importance compared to the safety and liquidity objectives described above. The majority of the portfolio is limited to highly rated/low risk securities in anticipation of earning a fair return relative to the risk being assumed. Securities are generally held to maturity unless declining credit or liquidity needs warrant a pre-maturity sale.

II. Scope:

This policy applies to the investment of both short-term operating funds and long-term capital funds including bond proceeds and bond reserve funds. Funds held by trustees, and fiscal agents are excluded from these rules, however, all funds, including component unit funds, are subject to applicable statutes and regulations established by the State of Oregon and the federal government.

- Investments of employees' retirement funds, deferred compensation plans, and other funds are not covered by this policy.
- Funds include but are not limited to:
 - General Funds
 - Special Revenue Funds
 - Internal Service Funds
 - Capital Projects Funds
 - Enterprise Funds
 - Special District Funds
 - Debt Service Funds
 - Unsegregated Tax Funds
 - Trust & Agency Funds
 - Taxing Districts

A General Purpose Investment Portfolio will be the primary pool in which investments will be made. This portfolio may have a range of funds from a low of \$32 million to a high of \$80 million. Other special purpose investment pools may be established to conform to legal restrictions (e.g. bond covenants) or to recognize the longer term nature of some funds (e.g. capital projects). Interest earned on the general purpose portfolio will be allocated prorata to the participants in the pool based upon average daily balance.

III. Standards of Care:

1. **Prudence:** The standard of prudence to be used by investment officials shall be the "prudent person" standard and shall be applied in the context of managing an overall portfolio. Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived.
 - Investment officers acting in accordance with written procedures and this investment policy and exercising due diligence shall be relieved of personal responsibility for an individual security's credit risk or market price changes, provided deviations from expectations are reported in a timely fashion and the liquidity and the sale of securities are carried out in accordance with the terms of this policy.
2. **Ethics and Conflicts of Interest:** Officers and employees involved in the investment process shall refrain from personal business activity that could conflict with the proper execution and management of the investment program, or that could impair their ability to make impartial decisions. Employees and investment officials shall disclose any material interests in financial institutions with which they conduct business. They shall further disclose any personal financial/investment positions that could be related to the performance of the investment portfolio. Employees, officers and their families shall refrain from undertaking personal investment transactions with the same individual with which business is conducted on behalf of Josephine County. Officers and employees shall, at all times, comply with the State of Oregon code of Government Ethics as set forth in ORS 244.
3. **Delegation of Authority:** Authority to manage the investment program is granted to the publicly elected County Treasurer, hereinafter referred to as investment officer, and derived from

the following: ORS 294.035 to 294.053, 294.125 to 294.145, and 294.810. The investment officer shall be responsible for all transactions undertaken and shall establish a system of controls to regulate the activities of subordinate officials. No person may engage in an investment transaction without approval of the investment officer.

IV. Safekeeping and Custody, Delivery versus Payment:

All investments eligible for delivery purchased pursuant to this investment policy will be delivered versus payment by either book entry or physical delivery to a third party custodian. The custodian shall issue a safekeeping receipt to Josephine County listing the specific instrument, selling broker/dealer, issuer, coupon, maturity, CUSIP number, purchase or sale price, transaction date, and other pertinent information.

V. Accounting Method:

1. Accounting Standards:

- Josephine County, Department of the Treasurer, shall comply with required legal provisions and Generally Accepted Accounting Principles (GAAP). The accounting principles are those contained in the pronouncements of authoritative bodies including, but not necessarily limited to, the American Institute of Certified Public Accountants (AICPA); the Financial Accounting Standards Board (FASB); and the Government Accounting Standards Board (GASB).

2. Investment Return:

- Investment returns are calculated as total return, including interest earned, premiums, discounts and appreciation or depreciation of investment values. Investment return for purposes of benchmarking against performance indicators will be compared on a total portfolio basis.

3. Investment Costs:

- Investments will be carried at par. Losses on the sale of investments will be recognized at time of sale. Premiums or discounts on securities will be amortized or accreted over the life of the securities.

4. Investment Fee:

- Where allowable, an investment fee of .25% (1/4%) of portfolio par value may be deducted from interest earned and credited to the County General Fund each month. After deducting the investment fee, interest earnings will be credited as of the last day of each month to the funds from which the investment was made based on the average daily balance in the fund.

VI. Internal Controls:

The Treasurer is responsible for establishing and maintaining an adequate internal control structure designed to reasonably protect the assets of Josephine County from loss, theft or misuse. The concept of reasonable assurance recognizes that (1) the cost of a control should not exceed the benefits likely to be derived and (2) the valuations of costs and benefits require estimates and judgments by management.

Accordingly, the Treasurer shall establish a process for an annual independent review by an external auditor to assure compliance with policies and procedures. This audit will generally coincide with the annual external financial audit. The internal controls shall address the following points:

1. Control of collusion.
2. Separation of transaction authority from accounting and record keeping.

3. Custodial safekeeping.
4. Avoidance of physical delivery of securities whenever possible and address control requirements for physical delivery where necessary.
5. Clear delegation of authority to subordinate staff members.
6. Written confirmation of transactions for investments and wire transfers.
7. Development of a wire transfer agreement with the lead bank and third party custodian and implementation of the appropriate safeguards described in the GFOA Recommended Practice on "Electronic Transactions for State and Local Governments".
8. Compliance and oversight with investment parameters including diversification and maximum maturity.

VII. Reporting Requirements:

1. Reports to Governing Body:

- a. Monthly Report: The Josephine County Treasurer will provide a monthly report to the County Commissioners on or before the 10th of the succeeding month or the first business day thereafter:
 - Fulfilling the requirements of ORS 208.090 reporting:
 - The amount of cash on hand in the custody of the county treasurer;
 - The banks in which such funds are deposited, with the amounts so deposited in each;
 - The security furnished the county by each bank to cover such deposits (i.e. collateral certificate amount), and
 - The interest rates paid on such deposits.
 - Reporting on Investments, including:
 - Purchase Date
 - Maturity Date
 - Book Value
 - Rate of Return
 - Coupon Rate
 - Collateral, if required
- b. Quarterly Report: The Josephine County Treasurer will provide an additional quarterly report to the County Commissioners on or before the last day of the succeeding month, including:
 - Portfolio information included in the monthly report expanded to include market valuation ("mark-to-market"),
 - Statement of compliance with this Investment Policy,
 - Performance of the portfolio relative to benchmark(s),
 - Percentage of the total portfolio that each type of investment represents along with the percentages authorized in this policy,
 - Average weighted yield to maturity of portfolio on investments as compared to applicable benchmarks,
 - A listing of fund cash balances under the control of the Treasurer and transactions therein, and
 - Any narrative necessary for adequate clarification.
- c. Bi-Annual Reporting: In February and August of each year the Treasurer will report to the Board of County Commissioners in accordance with ORS 294.085. In addition to the information included in the written Quarterly Report, the Treasurer shall review the Quarterly Report with Board of County Commissioners in a regularly scheduled meeting.

2. **Management Reports:** The investment officer shall maintain up-to-date records of portfolio activity providing reports which are timely and available daily. A monthly report of investment activity is generated for management reporting purposes and as a permanent record.

VIII. Investment Policy Adoption:

This Investment Policy will be formally adopted by the Josephine County Board of Commissioners, and will be re-adopted annually even if there are no changes.

IX. Qualified Financial Institutions:

The Treasurer will maintain a list of all authorized Broker/Dealers and Financial Institutions authorized to provide investment services. To qualify for the list, they must be an approved security Broker/Dealer, selected by credit worthiness that is authorized to provide investment services in the State of Oregon.

- These may include "primary" dealers or regional dealers that qualify under Securities & Exchange Commission Rule 15C3-1 (uniform net capital rule). No public deposits shall be made except in a qualified public depository as established by the State of Oregon.
- All financial institutions and broker/dealers who desire to become qualified bidders for investment transactions must supply the Treasurer with the following information:
 - Audited financial statement
 - Proof of National Association of Security Dealers certification
 - Proof of state registration
 - Completed Broker/Dealer Questionnaire
 - Certification of having read and understood the Josephine County Investment Policy
 - Certification of agreement to comply with Josephine County's Investment Policy
- After due consideration and approval, the firm will be added to the list. The Treasurer will conduct an annual review of the financial condition and registration requirements of qualified Broker/Dealers. Preferably, firms shall have a local office and Registered Representative in Oregon. However, the County will not exclude Broker/Dealers located outside the state as long as they are licensed in Oregon and meet all other qualifications.
- An updated Broker/Dealer Questionnaire will be mailed to each firm annually, and should be completed and returned to the Treasurer's office. Failure to complete the update questionnaire may lead to removal from the approved list.
- Additions or deletions to the list will be made at the Treasurer's discretion.

X. Suitable and Authorized Investments

The following investments will be permitted by this policy, ORS 294.035 and 294.810:

1. U.S. Treasury Obligation (bills, notes and bonds)
2. U.S. Government Agency Securities and Instruments of Government Sponsored Enterprises
3. Banker's Acceptances (BA's) from qualified institutions
4. State of Oregon Investment Pool
5. Certificates of Deposits (CD's) and interest bearing accounts
(Subject to ORS 295 collateralization)
6. Repurchase Agreements
7. State and Local Government Securities

Reverse Repurchase Agreements and Securities Lending Agreements are not allowed under this policy.

XI. Portfolio Diversification

Diversification will be sought within the following guidelines with the purpose of reduction of overall portfolio risk while attaining market average rates of return. The investments shall be diversified by investment type, issuer and maturity. Before any transaction is concluded, to the extent practicable, the Treasurer shall solicit and document competitive bids and offers on comparable securities. When not practicable, the reasons should be similarly documented. Additionally, if reasonably unanticipated events cause the portfolio limits to be exceeded, the Treasurer will take steps necessary to correct the situation as soon as practicable. The Treasurer will document the occurrence and advise the Josephine County Board of Commissioners in the next monthly and quarterly investment report.

1. Diversification by Type and Issuer:

<i>Security</i>	<i>%Limitation of Total Portfolio</i>
US Treasury	Up to 100%
US Government Agencies and Government Sponsored Enterprises (GSE)	Up to 75% and 25% in any single Agency or GSE
State of Oregon Investment Pool	Up to 100% or to the maximum imposed by ORS 294.810
Certificates of Deposit and other Interest Bearing Accounts.	Up to 50% and 25% in any single qualified financial institution collateralized as required by ORS Chapter 295
Banker's Acceptances	Up to 25% and 10%, on the settlement date, in bankers acceptances of any qualified financial institution
State and Local Government Securities	Up to 25% of total portfolio
Repurchase Agreements	Up to 25% and 10% in any single qualified financial institution collateralized as required by ORS Chapter 294.035

2. Diversification by Maturity:

Maturity limitations shall depend upon whether the funds being invested are considered short term or long term funds. All funds shall be considered short term except those reserved for capital projects (i.e., bond sale proceeds) and special assessment repayments being held for debt retirement.

a. Short Term Portfolio (maturity up to 3 years):

- Investment maturity for operating funds shall be scheduled to coincide with projected cash flow needs and timed to comply with the following guidelines:
 - Maturity will be laddered to provide for interest rate fluctuations and to minimize investment interest rate risk. Careful monitoring of interest rate fluctuation will provide a basis for evaluating risk and return.

- Due to fluctuations in the aggregate surplus funds balance, maximum percentages for a particular issuer, investment type or maturity may be exceeded at a point in time subsequent to the purchase of a particular security. Securities need not be liquidated to realign the portfolio; however, consideration should be given to this matter when future liquidations are made.

1 to 30 day maturity	Minimum of 10% of total portfolio
1 to 90 day maturity	Minimum of 25% of total portfolio
1 to 365 day maturity	No limit
12 months to 18 month maturity	Maximum of 25% of total portfolio
18 months to 36 months	Maximum of 25% of total portfolio

b. Long Term Portfolio (Capital Projects and Special Assessment Repayments) maturities over 36 months and up to a maximum of 60 months:

- Maturity scheduling shall be timed according to anticipated need. For example, investment of capital project funds shall be timed to meet projected contractor payments.
- Investment of prepaid assessment funds shall be tied to bond payment dates, after cash flow projections are made using a forecasting model which considers prepayment rate, delinquency rate, interest on bonds, and income on investments.
- The investments of bond proceeds are restricted under bond covenants that may be more restrictive than the investment parameters included in this policy. Bond proceeds shall be invested in accordance with the most restrictive parameters of this policy and the applicable bond covenants and tax laws.
- Investments in the long term portfolio will be limited to U.S. Treasury Securities or securities of U.S. Government Agencies and Instrumentalities.
- This investment policy has been submitted for review by the OSTF Board as specified above and in accordance with ORS 294.135(1)(a), debt service reserves may be invested to a maturity date not exceeding five years. Otherwise debt service reserves shall not be invested to a maturity date exceeding one year.

XII. Bids and Offers

Before any security purchase or sale is initiated, the Investment Officer shall first determine the appropriateness of seeking competitive bids or offers. Such factors to consider include where the securities are held, the size of the transaction, and the term to maturity. In the event competitive bids or offers are not sought, the decision to do so shall be documented. When required by tax laws or bond covenants competitive bids and offers shall always be sought for security purchases and sales of bond funds.

XIII. Collateralization:

All bank deposits shall be held in qualified Oregon depositories in accordance with ORS Chapter 295. Such deposits are designated cash management tools and not investments under this policy unless otherwise designated as such.

- Certificates of Deposit and Interest Bearing Bank Accounts opened for investment purposes are considered investments under this policy, and are collateralized by the Public Funds Collateralization Program as governed ORS Chapter 295.
- ORS 294.035 (k) requires repurchase agreement collateral to be limited in maturity to three years and priced according to percentages prescribed by written policy of the Oregon Investment Council or the Oregon Short-Term Fund Board. On March 12, 1996, the OSTF Board adopted the following margins:
 - US Treasury Securities: 102%
 - US Agency Discount and Coupon Securities: 102%
 - Mortgage Backed and other: 103%*
- A signed Master Repurchase Agreement must be in place prior to execution of any repurchase agreement trade.

*Limited to those securities described in ORS 294.035

XIV. Performance Indicators:

The performance of the County's portfolio shall be measured against the performance of the Oregon Local Government Investment Pool and the 90-day Treasury bill rate.

- It is the goal of the County to maintain an annualized yield that is not more than ½ percent (.5%) lower than the Oregon Local Government Investment Pool and is not less than ¼ percent (.25%) higher than the 90 day Treasury Bill yield. The County may also benchmark against any other money market indices it deems appropriate.
- It is anticipated the portfolio should attain a benchmark average rate of return over time. Factors influencing performance deviations will be described by the investment officer in quarterly reports to the Josephine County Board of Commissioners.

XV. Additional Documents

The following documents are used in conjunction with this policy, and are available from the Treasurer's office upon request:

1. Listing of authorized personnel
2. Relevant investment statutes
3. Master repurchase agreements
4. Listing of authorized broker/dealers and financial institutions –Addendum A
5. Safekeeping agreements
6. Wire transfer agreements
7. Broker confirmations and safekeeping receipts
8. Broker/Dealer Questionnaire
9. Monthly and other investment reports

ADDENDUM A

LISTING OF AUTHORIZED BROKER/DEALERS AND FINANCIAL INSTITUTIONS

Brokerage Firms:

Bank of America Merrill Lynch
RBC Dain Rauscher, Inc.
Raymond James Inc
PiperJaffray & Co.
Seattle Northwest Securities Corp.
Wells Fargo Brokerage Services, LLC
Morgan Stanley Smith Barney LLC
Time Value Investments
Vining Sparks

Banks:

Bank of America, NT & SA
First Interstate Bank
Evergreen Federal Bank
JPMorgan Chase Bank NA
Key Bank
US National Bank of Oregon
Umpqua Bank
Wells Fargo Bank NA
Oregon Community Development Banks (\$95,000 maximum per bank)

Other:

Oregon Local Government Investment Pool (LGIP)
Northwest Community Credit Union
Rogue Federal Credit Union
First Community Credit Union



Josephine County Board of Commissioners

AGENDA REQUEST FOR BOARD OF COMMISSIONERS

Agenda Requests are due by NOON on Monday of the week scheduled for Administration Workshop
Requests received after that time will be placed on the Administration Workshop agenda for the following week

If sending documents electronically – send to both
wwatkins@co.josephine.or.us and rperrin@co.josephine.or.us

REVISED AUGUST 2017

Date Submitted to BCC	01/26/18
Administration Workshop Meeting Date (Thursday)	01/31/18
WBS Meeting Date (Wednesday) <small>Note: Second Wednesday of the month is evening session</small>	02/07/18

AGENDA TITLE: Report and Recommendation for the authorization for Rob Brandes to be the authorized signer for the FLAP Grant for the improvements on Galice Road, located in Josephine County for the traveling public's safety.	
Department/Contact Person (Include Title and Ext. #)	Debbie Foster, Sr. Dept. Specialist ext. 4433
Presenter (Include Name and Title)	Rob Brandes, Public Works Director, ext.4429,
Background information	Authorization for the Public Works Director to be the authorizes signer for the FLAP Grant for the Galice Road Improvements
Action you are requesting from the Board	Boards Signatures
Reviewed by Finance Director (If yes, Finance's signature required)	N/A
Reviewed by Legal Counsel (If yes, Legal's signature required)	Yes
Reviewed by Information Technology (If yes, IT's signature required)	N/A
Total Revenue, Cost, or Pass-Thru Funds to the County	\$10% cost of the total construction.Q
Notes or Special Instructions to BCC Staff	Please return the original signed report & Recommendation to Debbie Foster for recording.

Title of Document(s) Submitted <u>All exhibits must be clearly marked</u>	Number of original documents submitted	Are all signatures on the documents? Y/N or BCC only	Are additional signatures needed? Y/N	Will a state or federal agency be signing the document? Y/N	Will additional signatures be received electronically? Y/N
Report and Recommendation for the authorization for Rob Brandes to be the authorized signer for the FLAP Grant for the improvements on Galice Road, located in Josephine County for the traveling public's safety.	1	BCC only	No	No	No

DOCUMENT DISTRIBUTION: Board staff is required to submit one fully executed document with original Board signatures for recording in the Board's Journal in the County Clerk's Office unless otherwise specified under Notes or Special Instructions to BCC Staff.

- **All Signatures:** If all signatures are obtained, one fully executed original document will be filed in the Board's Journal in the County Clerk's Office and all other originals will be returned to the contact person. If only one original was submitted, an electronic copy will be returned to the contact person.
- **Additional Signatures Needed on Original Documents:** Board staff will retain one document with original Board signatures and return the additional originals to the contact person to obtain the remaining signature(s). Upon department receipt of the fully executed document, one fully executed original document must be returned to Board staff for recording in the Board's Journal in the County Clerk's Office.
- **Additional Signatures Needed on Electronic Documents:** Board staff will retain one document with original Board signatures and return an electronic copy to the contact person to obtain the remaining signature(s). Upon department receipt of the fully executed



Josephine County, Oregon

PUBLIC WORKS

Robert Brandes, Director
201 River Heights Way, Grants Pass, OR 97527
(541) 474-5460 / FAX (541) 474-5475
TDD# (800) 735-2900

REPORT AND RECOMMENDATION

TO: Board of County Commissioners
FROM: Robert Brandes, Public Works Director
RE: Federal Lands Access Program Grant
DATE: January 18, 2018

Josephine County Public Works has applied for, and received, a grant award from Western Federal Lands Access Program (FLAP), to complete a number of improvements on Galice Road. These improvements include the installation of nearly three miles of guardrail, improvement of turnout areas and removal of a de-commissioned weigh station.

The total project cost is estimated at \$1,829,760, with JCPW's local match share (10.27%) being a projected \$187,916. The local share of this project will be largely in-kind work, with County forces undertaking the turn-out rehabilitation work and removal of the weigh station. This project will significantly improve the safety of Galice Road, which is heavily used for rafting, fishing, and many other commercial and private interests.

RECOMMENDATION: The BCC designate the Public Works Director as the Authorized Representative for the Federal Lands Access Program – Galice Guardrail Project on behalf of Josephine County Public Works.

Recommended By:

Robert Brandes
Public Works Director

Approved By:

Board of County Commissioners for Josephine County

Daniel E. DeYoung, Chair

Lily N. Morgan, Vice-Chair

Simon G. Hare, Commissioner

Dated this ____ day of January, 2018

Federal Lands Access Program Project Memorandum of Agreement

Project / Facility Name: OR JOSEPH 2401(2) Galice Road Improvements

Project Route: Galice Road

State: OREGON

County(ies): Josephine County

Owner of Federal Lands to which the Project Provides Access: USFS – Rogue River-Siskiyou NF1 and BLM – Medford District

Entity with Title or Maintenance Responsibility for Facility: Josephine County (JOSEPHINE COUNTY)

Type of Work: The project is to include:

- Preliminary Engineering including environmental studies to support an environmental decision
- Construction Engineering / Contract Administration
- Installation of new guardrail and end treatments
- Repair and replace existing guardrail and end treatments with new guardrail
- In-kind work to rehabilitate and Improve existing turnouts
- In-kind work to remove an existing weigh station
- In-kind work to add new trailhead signage

This Agreement does not obligate (commit to) the expenditure of Federal funds nor does it commit the parties to complete the project. Rather, this agreement sets forth the respective responsibilities as the project proceeds through the project development process and construction.

This agreement replaces Federal Lands Access Program Match Agreement dated: 06/20/17 between FHWA-WFL, and JOSEPHINE COUNTY.

Parties to this Agreement: Josephine County (JOSEPHINE COUNTY) and Federal Highway Administration, the Western Federal Lands Highway Division (FHWA-WFL).

The Program Decision Committee approved this project on 07/05/2017.

AGREED:

Josephine County

Date

Western Federal Lands Highway Division, FHWA-WFL

Date

A. PURPOSE OF THIS AGREEMENT:

This agreement documents the intent of the parties and sets forth the anticipated responsibilities of each party in the development, construction, and continued maintenance of the subject project. The purpose of the agreement is to identify and assign responsibilities for Project Development, Contract Advertisement, and Construction Administration as appropriate for this project, and to ensure continued maintenance of the facility for public use if improvements are made. The parties understand that any final decision as to design or construction will not be made until after the environmental analysis required under the National Environmental Policy Act (NEPA) is completed (this does not prevent the parties from assigning proposed design criteria to be studied in the NEPA process.) Any decision to proceed with the design and construction of the project will depend on the availability of appropriations at the time of obligation and other factors such as issues raised during the NEPA process, a natural disaster that changes the need for the project, a change in Congressional direction, or other relevant factors.

If Federal Lands Access Program (FLAP) funds are used for the development or construction of this project, the JOSEPHINE COUNTY agrees to provide a matching share equal to 10.27% of the total cost of the project, as detailed more fully in Section J below. When agency(cies) other than FHWA-WFL will be expending FLAP funds, the parties agree to execute a separate obligating document. No reimbursement will be made for expenses incurred prior to execution of the obligating document.

B. AUTHORITY:

This Agreement is entered into between the signatory parties pursuant to the provisions of 23 U.S.C. 204 and JOSEPHINE COUNTY authority.

C. JURISDICTION AND MAINTENANCE COMMITMENT:

JOSEPHINE COUNTY has jurisdictional authority to operate and maintain the existing facility and will operate and maintain the completed project at its expense.

D. FEDERAL LAND MANAGEMENT AGENCY COORDINATION:

JOSEPHINE COUNTY has coordinated project development with the USFS – Rogue River-Siskiyou NF and BLM – Medford District. The USFS – Rogue River-Siskiyou NF and BLM – Medford District support of the project is documented in the Project Proposal by endorsing the proposal.

Each party to this agreement who has a primary role in NEPA, design or construction should coordinate their activities with the USFS – Rogue River-Siskiyou NF and BLM – Medford District.

E. PROJECT BACKGROUND / SCOPE:

General:

The proposed project is along Galice Road, beginning at approximate Milepost (MP) 0.92 and ends at approximate MP 13.69. Galice Road is the primary seasonal connection between the I-5 corridor and the Southern Oregon Coast. The location of Galice Road within the project limits is in Township 35S, Range 6W, Sections 18,19, & 20, Township 35S, Range 7W, Sections 4 thru 11, 13, & 14, Township 35S, Range 8W, Section 1, Township 34S, Range 8W, Sections 24, 25, & 36.

The existing guardrail along Galice Road is substandard, including improper end terminals and terminal sections, missing anchors and blocks, inadequate height, past impact damage, and post deterioration. In addition, there are locations along the roadway that have no guardrail or have significant gaps in guardrail protection. The average age of the existing guardrail is more than 30 years old. Additionally, there are several existing turnout locations that are eroded and potholed which causes ponding after rain events.

The project includes replacing existing guardrail to meet current safety standards, adding guardrail where appropriate which adds approximately 15,000 LNFT of additional guardrail, rehabilitation of three turnouts with aggregate, weigh station removal, and installation of trailhead information board.

F. PROJECT BUDGET:

This is the anticipated budget for the project based on information developed to date. Federal Lands Access Program funds in conjunction with matching funds provided by JOSEPHINE COUNTY will fund this project as detailed in Section K.

Item	Total	Comments
Preliminary Engineering including scoping and NEPA (PE)	\$200,000	Verify at preliminary phase and update as needed.
Construction (CN)	\$1,355,378	Verify at preliminary phase and update as needed.
Construction Engineering (CN)	\$138,844	Verify at preliminary phase and update as needed.
Construction Modifications (CM) Contingency	\$135,538	Reserved for construction phase.
TOTAL	\$1,829,760	

G. ROLES AND RESPONSIBILITIES:

JOSEPHINE COUNTY

- Will be responsible for project activities identified in Section P.
- Will appoint a representative who will be the primary contact for FHWA-WFL's Project Manager
- Will provide appropriate match to all FLAP funds expended on the project even if the project is terminated prior to completion
- The JOSEPHINE COUNTY will be responsible for the acquisition of any rights-of-way and / or easements necessary to complete the project.
- Upon completion of construction, provide copies of final inspection demonstrating the project has been constructed in substantial conformity with the approved plans and specifications. JOSEPHINE COUNTY will provide written confirmation of its final acceptance of the constructed project.
- Will be responsible for terms and conditions as noted in 2 CFR 200 Common Rule Requirements & other legal requirements contained in Attachment 1
- Upon completion of construction, a final inspection will be convened by FHWA-WFL with attendees from JOSEPHINE COUNTY, and if it is determined the project has been constructed in substantial conformity with approved plans and specifications, JOSEPHINE COUNTY will provide written confirmation of its acceptance of the constructed project.

USFS

- Will be responsible for project activities as identified in Section P.
- Will appoint a representative who will be the primary contact for FHWA-WFL's Project Manager

FHWA-WFL

- Will be responsible for stewardship and oversight activities as noted in Section P.
- FHWA-WFL will be responsible for FHWA decisions that may be not be delegated. These decisions are identified in Section P.

H. ROLES AND RESPONSIBILITIES – MILESTONE SCHEDULE:

Responsible Lead	Product/Service	Schedule Start/Finish
FHWA-WFL	NEPA documentation	January 2018/ July 2018
FHWA-WFL	NEPA Decision	30 days after complete & satisfactory documentation is provided
FHWA-WFL	95% PS&E sign-off	June 2018 / July 2018

Responsible Lead	Product/Service	Schedule Start/Finish
FHWA-WFL	Advertise/Award	October 2018/ December 2018
FHWA-WFL	Construction	January 2019/ March 2019

I. PROPOSED DESIGN STANDARDS:

Design exceptions to standards, will be documented and sent to the JOSEPHINE COUNTY for concurrence.

Criteria	
Standard	Roadway Design Manual AASHTO – A Policy on Geometric Design
Functional Classification	Local County Road
Surface Type	Paved
Design Volume	850 ADT

J. FUNDING:

The project is funded by the Federal Lands Access Program administered by FHWA-WFL, with matching funds provided by JOSEPHINE COUNTY.

Funding Source	Amount	%
Federal Lands Access Funds	\$1,641,844	89.73%
Local Matching Share (JOSEPHINE COUNTY)	\$187,916	10.27%
Total Matching Share	\$1,829,760	100%
Total Projected Costs	\$1,829,760	

K. MATCHING SHARE REQUIREMENTS:

The purpose of this section is to document the intent of JOSEPHINE COUNTY to meet its match requirement for the subject project as authorized under section 23 USC 201(b)(7)(B).

All FLAP expenditures associated with this project will need to be matched by a Non- Federal source, by other Federal funds other than those made available under Titles 23 and 49 of the United States Code, or by funds made available under 23 U.S.C. 202 and 203. The matching requirement under the FAST Act will be met by JOSEPHINE COUNTY.

JOSEPHINE COUNTY and other agencies have committed to the project. The forms of match shall be those consistent with the 'Federal-Aid Guidance Non-Federal Matching Requirements' and as approved by FHWA-WFL. In the state of OREGON, 10.27% of the total project cost.

This project is authorized to use a Tapered Match. Under this approach, the non-Federal match is imposed over the entire project rather than individual progress payments. Timing of all fund transfers are specified in the Funding Plan. Tapered Match is authorized because it will result in an earlier completion date.

Estimated costs and fiscal year (FY) for the funding are based on the best budgeting and scheduling information known at the time. The final match will be determined based on actual expenditures at the conclusion of project work. Matching cash funds in FHWA-WFL receipt may need to be supplemented, or returned, once actual expenditures are determined. As noted under Modifications, if costs increase over the amount within this agreement, FHWA-WFL will consult with the agency(ies) providing Match before granting approval.

Maintain all project records, including source documentation for all expenditures and in-kind contributions, for a period of three (3) years from the date of final acceptance. If any litigation claim, negotiation, or audit has been started before expiration of the three-year period, the records shall be retained until completion of the action and resolution of all issues that arise from it.

The following agencies have agreed to contribute the amounts shown which will reduce the federal share by the same amount. The Funding Plan is as follows:

Agency	Phase	Form	Due	Value	Comments
JOSEPHINE COUNTY	CN	<i>in-kind</i>	9/30/2018	\$ 210,000	Rehabilitating 3 turnouts and Weigh Station removal
JOSEPHINE COUNTY	CN	<i>in-kind</i>	3/30/2019	\$ 9,200	(If additional match is needed) Paint striping, new trailhead sign, and turnout signage

L. PROJECT TEAM MEMBERS – POINT OF CONTACT:

The following table provides the points of contact for this project. They are to be the first persons to deal with any issues or questions that arise over the implementation of each party's role and responsibility for this agreement.

NAME / TITLE	ORGANIZATION	TELEPHONE NO. / E-MAIL
Robert Brandes, Public Work Director	JOSEPHINE COUNTY	(541) 474-5460 RBrandes@co.josephine.or.us
Helen Oppenheimer, Project Manager	Federal Highway Administration-Western Federal Lands Highway Division	360-619-7881, Helen.Oppenheimer@dot.gov
Brent Coe, Project Manager Branch Chief	Federal Highway Administration-Western Federal Lands Highway Division	360-619-7744, Brent.Coe@dot.gov

M. CHANGES / AMENDMENTS / ADDENDUMS:

The agreement may be modified, amended, or have addendums added by mutual agreement of all parties. The change, amendment, or addendum must be in writing and executed by all of the parties.

The types of changes envisioned include, but are not limited to, changes that significantly impact scope, schedule, or budget; changes to the local match, either in type or responsibility; change that alter the level of effort or responsibilities of a party. The parties commit to consider suggested changes in good faith. Failure to reach agreement on changes may be cause for termination of this agreement.

A change in composition of the project team members does not require the agreement to be amended.

It is the responsibility of the project team members to recognize when changes are needed and to make timely notifications to their management in order to avoid project delivery delays.

N. ISSUE RESOLUTION PROCEDURES MATRIX:

Issues should be resolved at the lowest level possible. The issue should be clearly defined in writing and understood by all parties. Escalating to the next level can be requested by any party. When an issue is resolved, the decision will be communicated to all levels below.

JOSEPHINE COUNTY	FHWA-WFL	Time
Robert Brandes Public Works Director RBrandes@co.josephine.or.us (541) 474-5460	Helen Oppenheimer, Project Manager helen.oppenheimer@dot.gov (360) 619-7881	15 Days
Chuck DeJanvier County Engineer CDeJanvier@co.josephine.or.us (541) 474-5460	Brent Coe, Project Manager Branch Chief brent.coe@dot.gov (360) 619-7744	15 Days

O. TERMINATION:

This agreement may be terminated by mutual written consent of all parties. This agreement may also be terminated if either the NEPA process or funding availability requires a change and the parties are not able to agree to the change. Any termination of this agreement shall not prejudice any rights or obligations accrued to the parties prior to termination. If Federal access funds have been expended prior to termination, the party responsible for the match agrees to provide a match in the applicable percentage of the total amount expended on the project prior to the termination.

P. PROJECT and STEWARDSHIP & OVERSIGHT ACTIVITIES:

Phase	Activity	Josephine County	FHWA-WFL
Planning & Programming	Evidence of funding allocation	Signed Project Agreement	Signed Project Agreement
Planning & Programming	Project agreement with scope, schedule, & budget	Signed Project Agreement	Signed Project Agreement
Environment	Lead Federal agency identified		Identified as FHWA-WFL
Environment	Draft Environmental resource Documents/ Studies	Provide	Review/ Concur
Environment	Non FHWA environmental decisions	Provide available related decisions	File copy
Environment	Evidence of permits	Provide	File copy
Environment	Attend public meetings	Notify	Attend as determined by FHWA-WFL
Environment	FHWA NEPA decision	Comply	Provide
Design	Review 95% PS&E	Provide	Approve
Design	Design exceptions	Draft	Approve
Design	Review ROW certifications and acquisition diaries	Provide	Approve
Design	Utility/RR Agreements	Provide	Approve

Acquisitions	Approval of proprietary products	Provide	Approve
Acquisitions	Contract package for required clauses (Civil Rights, Davis-Bacon, Buy America/American,...)	Provide	Approve
Acquisitions	Copy of award package	Provide	File copy
Acquisitions	Review or approve contract modifications	Review	Approve
Construction	Attend Pre-Construction meeting	Attend	Attend as determined by FHWA-WFL
Construction	Mid-construction Project Inspections	Attend	Attend as determined by FHWA-WFL
Construction	Final Project Inspections	Attend	Attend as determined by FHWA-WFL
Construction	Copy of As-builts	Provide	File copy
Construction	Materials Testing QA/QC Plan	Provide	File copy
Construction	Copy of final voucher	Provide	File copy
Construction	Contract Dispute (Claim)	Notify	Review/Approve

ATTACHMENT 1

2 CFR 200 Common Rule Requirements and other legal requirements

A. GENERAL TERMS AND CONDITIONS

Background. To promote accelerated and efficient delivery of projects that benefit Federal Land Management Agencies, the Secretary has exercised his discretion under 23 U.S.C. § 201(a) and § 204(a)(3) to apply Title 23 U.S.C. Chapter 1 requirements (Federal Aid requirements) to Federal Lands Access Projects delivered by State Departments of Transportation (DOTs) and local public agencies that are evaluated and certified by State DOTs to deliver Federal Aid projects. In instances where a local public agency is not certified to deliver Federal-aid projects and Federal Lands Access projects are delivered by the local public agency cooperatively with Federal Lands Highway Division office oversight, the government-wide Common Rule (2 CFR 200) will be applied. This cooperative relationship will enable the FLH to identify any federal law issues in cooperation with the local public agency which may arise in the project development and delivery process.

1. The Agreement provides funds on a reimbursable basis to the Servicing Agency for the project described in the Access Program Project Memorandum of Agreement.
2. The Government's liability to make payments to the Servicing Agency under the Agreement is limited to those funds obligated by the Government under the Agreement as indicated herein and by any subsequent amendments agreed to in writing by all parties.
3. The Servicing Agency agrees to abide by and comply with all terms and conditions of the Agreement and to abide by, and comply with, all requirements of applicable law, including those specified in this Attachment, which are considered as an integral part of the Agreement.
4. In the case of any inconsistency or conflict between the specific provisions of the Agreement and this Attachment, such inconsistency or conflict shall be resolved by giving preference to the Agreement.
5. The Servicing Agency shall be responsible for ensuring that the Project is designed and/or constructed in accordance with the Agreement, and all applicable Federal laws, regulations and policies of the Federal Highway Administration ("FHWA" also referred to herein as the "Government").
6. Reimbursement of costs incurred pursuant to the Agreement will be made pursuant to and in accordance with 2 CFR Part 200 and the provisions of such regulations and procedures as the Government may prescribe. Determination of allowable costs incurred by the Servicing Agency under the Agreement shall be made in accordance with applicable government-wide cost principles under 2 CFR 200. Closeout of the Agreement shall be based upon a determination that all applicable administrative actions and all required work of the Agreement have been completed in accordance with 2 CFR Part 200. Upon the Government's review of all financial, performance, and other reports required as a condition of the Agreement, the Government may make any upward or downward adjustments to the allowable costs in accordance with 2 CFR 200.
7. The Servicing Agency agrees to carry out and complete the Project without undue delays and in accordance with the terms of the Agreement, including the Project Schedule set out in the Agreement, or in the Access Program Project Memorandum of Agreement if no Schedule is included in this Agreement, and comply with such regulations and procedures as the Government may prescribe.
8. The Servicing Agency agrees to retain all documents relevant to the Project for a period of three years from completion of the Project and receipt of final reimbursement from the Government. The

Servicing Agency agrees to furnish the Government, upon request, all documents and records pertaining to the Project.

9. The Government is subject to the Freedom of Information Act (FOIA). The Servicing Agency should therefore be aware that all materials submitted by the Servicing Agency related to the Agreement will become agency records and thus are subject to FOIA and to public release through individual FOIA requests.

10. The Government shall not be responsible or liable for any damage to property or any injury to persons that may arise from, or be incident to, performance or compliance with this the Servicing Agency's work under the Agreement. The Government will be responsible for damages or injuries caused by the negligence of its own employees, to the extent permitted under the Federal Tort Claims Act, 28 U.S.C. 2671-2680.

11. To the extent that the State has not already enacted legislation regarding texting while driving, the Government encourages the Servicing Agency to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies that bar text messaging while driving company-owned or rented vehicles, or government-owned, leased, or rented vehicles or privately-owned vehicles when on official government business or when performing any work for or on behalf of the Government. See Executive Order 13513 "Federal Leadership on Reducing Text Messaging While Driving", Oct. 1, 2009 (available at <http://edocket.access.gpo.gov/2009/E9-24203.htm>) and DOT Order 3902.10 "Text Messaging While Driving", Dec. 30, 2009, as implemented by Financial Assistance Policy Letter (No. FAP-2010-01, Feb. 2, 2010, available at http://www.dot.gov/sites/dot.dev/files/docs/FAPL_2010-01.pdf) This includes, but is not limited to, the Servicing Agency:

- a. considering new rules and programs or re-evaluating existing programs to prohibit text messaging while driving;
- b. conducting education, awareness, and other outreach for employees about the safety risks associated with texting while driving; and
- c. encouraging voluntary compliance with the agency's text messaging policy while off duty.

The Servicing Agency is encouraged to insert the substance of this clause in all contracts and subcontracts.

B. APPLICABLE FEDERAL LAWS AND REGULATIONS

By entering into the Agreement, the Servicing Agency assures, certifies, and agrees to comply with all applicable Federal laws, regulations, policies, guidelines, and requirements as they relate to the use of Federal funds for this Project including, but not limited to, the following:

General Federal Legislation

- Fair Labor Standards Act - 29 U.S.C. § 201, et seq.
- Hatch Act - 5 U.S.C. §§ 1501, et seq.
- Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 Title - 42 U.S.C. §§4601, et seq.
- National Historic Preservation Act of 1966 – 16 U.S.C. § 470, et seq.
- Archaeological Resources Protection Act – 16 U.S.C. 470aa, et seq.
- Native American Graves Protection and Repatriation Act - 25 U.S.C. § 3001, et seq.

- National Environmental Policy Act of 1969 - 42 U.S.C. §§ 4321, et seq.
- Wild and Scenic Rivers Act, P.L. 90-542, as amended – 16 U.S.C. §§ 1271, et seq.
- Federal Water Pollution Control Act, as amended - 33 U.S.C. §§ 1251-1376
- Clean Air Act – 42 U.S.C. § 7401, et seq.
- Single Audit Act of 1984 - 31 U.S.C. §§ 7501, et seq.
- Americans with Disabilities Act of 1990 - 42 U.S.C. § 12101, et seq.
- Section 504 of the Rehabilitation Act of 1973, as amended - 29 U.S.C. § 794
- Title VI of the Civil Rights Act of 1964 - 42 U.S.C. §§ 2000d et seq.
- Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions – 31 U.S.C. § 1352
- Magnuson-Stevens Fishery Conservation and Management Act – 16 U.S.C. § 1855
- Farmlands Protection Policy Act of 1981 – 7 § U.S.C. 4201
- Noise Control Act of 1972 – 42 U.S.C. § 4901, et seq.
- Section 4(f) of the Department of Transportation Act of 1966, 49 U.S.C. 303 and 23 U.S.C. § 138
- Resource Conservation and Recovery Act of 1976 (RCRA), as amended -- 42 U.S.C. §§ 6901, et seq.
- Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended --42 U.S.C. §§ 9601-9657
- Safe Drinking Water Act -- 42 U.S.C. §§ 300f-300j-6
- Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 – 42 U.S.C. § 6901, et seq.
- Migratory Bird Treaty Act 16 U.S.C. § 760c-760g
- The Federal Funding Transparency and Accountability Act of 2006, as amended (Pub. L. 109–282, as amended by section 6202 of Public Law 110–252)
- Cargo Preference Act of 1954 – 46 U.S.C. § 55305
- Buy America Act – 23 U.S.C. § 313 (see http://www.fhwa.dot.gov/construction/contracts/buyam_qa.cfm)
- Nondiscrimination – 23 U.S.C. § 140

General Federal Regulations

- Suspension and Debarment – 2 CFR Parts Part 180
- Non-procurement Suspension and Debarment – 2 CFR Part 1200
- External Programs – 23 CFR Part 230
- Manual on Uniform Traffic Control Devices – 23 CFR Part 655
- Environmental Impact and Related Procedures – 23 CFR Part 771
- Procedures for Abatement of Highway Traffic and Construction Noise – 23 CFR Part 772
- Procedures Implementing Section 4(f) of the Department of Transportation Act – 23 CFR Part 774
- DOT's oversight of DOJ's ADA regulations for non-transit programs, including the ADA Accessibility Guidelines, required by the DOJ regulations at – 28 CFR Part 35
- Procedures for predetermination of wage rates – 29 CFR Part 1
- Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States – 29 CFR Part 3
- Labor standards provisions applicable to contracts governing federally financed and assisted construction (also labor standards provisions applicable to non-construction contracts subject to the Contract Work Hours and Safety Standards Act) – 29 CFR Part 5
- Permitting Requirements under the National Pollutant Discharge Elimination System – 40 CFR Part 122.
- Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and federally assisted contracting requirements) – 41 CFR Parts 60, et seq.
- Uniform administrative requirements, cost principles, and audit requirements for Federal Awards – 2 CFR Part 200
- New Restrictions on Lobbying – 49 CFR Part 20
- Nondiscrimination in Federally Assisted Programs of the Department of Transportation –Effectuation of Title VI of the Civil Rights Act of 1964 – 49 CFR Part 21
- Uniform relocation assistance and real property acquisition for Federal and Federally assisted programs – 49 CFR Part 24
- Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance – 49 CFR Part 25
- Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs – 49 CFR Part 26
- Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance – 49 CFR Part 27
- Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Transportation – 49 CFR Part 28
- Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors – 49 CFR Part 30
- Government-wide Requirements for Drug-Free Workplace (Financial Assistance) – 49 CFR Part 32
- DOT's implementing ADA regulations for transit, including the ADA Accessibility Guidelines in Part 37, Appendix A – 49 CFR Parts 37 and 38
- Procedures for Transportation Workplace Drug and Alcohol Testing Programs – 49 CFR Part 40
- 23 C.F.R. Part 710 applies unless otherwise agreed to by FHWA

The Servicing Agency, when contracting for work to be performed under this Agreement, will include in the prime contract the applicable provisions required under 2 CFR 200.326.

The Servicing Agency, when contracting for construction services, shall ensure that all laborers and mechanics employed by contractors or subcontractors on the construction work shall be paid wages at rates not less than those prevailing on the same type of work on similar construction in the immediate locality as determined by the Secretary of Labor in accordance with sections 3141, 3146, and 3147 of title 40.

C. ASSURANCES AND CERTIFICATIONS

TITLE VI ASSURANCE

(Implementing Title VI of the Civil Rights Act of 1964, as amended)

ASSURANCE CONCERNING NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS AND ACTIVITIES RECEIVING OR BENEFITING FROM FEDERAL FINANCIAL ASSISTANCE

(Implementing the Rehabilitation Act of 1973, as amended, and the Americans With Disabilities Act, as amended)

49 CFR Parts 21, 25, 27, 37 and 38

The United States Department of Transportation (USDOT)

Standard Title VI/Non-Discrimination Assurances

DOT Order No. 1050.2A

By entering into the Agreement, the Servicing Agency (also herein referred to as the "Recipient"), **HEREBY AGREES THAT**, as a condition to receiving any Federal funds from the U.S. Department of Transportation (DOT), through the Federal Highway Administration (FHWA), is subject to and will comply with the following:

Statutory/Regulatory Authorities

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR Part 21 (entitled *Non-discrimination In Federally-Assisted Programs Of The Department Of Transportation—Effectuation Of Title VI Of The Civil Rights Act Of 1964*);
- 28 CFR section 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964);

The preceding statutory and regulatory cites hereinafter are referred to as the "Acts" and "Regulations," respectively.

General Assurances

In accordance with the Acts, the Regulations, and other pertinent directives, circulars, policy, memoranda, and/or guidance, the Servicing Agency hereby gives assurance that it will promptly take any measures necessary to ensure that:

"No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity," for which the Recipient receives Federal financial assistance from DOT, including the FHWA.

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI and other Non-discrimination requirements (The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973), by restoring the broad, institutional-wide scope and coverage of these non-discrimination statutes and requirements to include all programs and activities of the Servicing Agency, so long as any portion of the program is Federally assisted.

Specific Assurances

More specifically, and without limiting the above general Assurance, the Servicing Agency agrees with and gives the following Assurances with respect to its receipt of funds for this project:

1. The Servicing Agency agrees that each "activity," "facility," or "program," as defined in §§ 21.23 (b) and 21.23 (e) of 49 CFR § 21 will be (with regard to an "activity") facilitated, or will be (with regard to a "facility") operated, or will be (with regard to a "program") conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.
2. The Servicing Agency will insert the following notification in all solicitations for bids and requests for proposals for work or materials, regardless of funding source:
 - a. *"The Servicing Agency, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award."*
3. The Servicing Agency will insert the clauses of Appendix A of this Assurance in every contract or agreement subject to the Acts and the Regulations.

4. The Servicing Agency will insert the clauses of Appendix B of this Assurance, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Recipient.
5. That where the Servicing Agency receives Federal financial assistance to construct a facility, or part of a facility, the Assurance will extend to the entire facility and facilities operated in connection therewith.
6. That where the Servicing Agency receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the Assurance will extend to rights to space on, over, or under such property.
7. That the Servicing Agency will include the clauses set forth in Appendix C and Appendix D of this Assurance, as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Servicing Agency with other parties:
 - a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
 - b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
8. That this Assurance obligates the Servicing Agency or any transferee for the longer of the following periods:
 - a. the period during which the property is used for a purpose for which the Federal funds were extended, or for another purpose involving the provision of similar services or benefits; or
 - b. the period during which the Servicing Agency retains ownership or possession of the property.
9. The Servicing Agency will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, sub-recipients, grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other parties funded in whole or part from the funds provided under this Agreement will comply with all requirements imposed or pursuant to the Acts, the Regulations, and this Assurance.
10. The Servicing Agency agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Acts, the Regulations, and this Assurance.

By signing the Agreement, the Servicing Agency also agrees to comply (and require any sub-recipients, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing the FHWA's access to records, accounts, documents, information, facilities, and staff. The Servicing Agency also recognizes that it must comply with any program or compliance reviews, and/or complaint investigations conducted by the FHWA. The Servicing Agency must keep records, reports, and submit the material for review upon request to FHWA, or its designee in a timely, complete, and accurate way.

Additionally, the Servicing Agency must comply with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

The Servicing Agency gives this ASSURANCE in consideration of and for obtaining any Federal funds, and/or discounts, or other Federal-aid and Federal financial assistance extended after the date hereof to the recipients by the U.S. Department of Transportation.

This ASSURANCE is binding on the Servicing Agency, contractors, subcontractors and their subcontractors', transferees, successors in interest, and any other participants in the funds provided under this Agreement.

APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-funded programs of the U.S. Department of Transportation, Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Servicing Agency or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Servicing Agency or the FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Servicing Agency will impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.

6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Servicing Agency or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Servicing Agency to enter into any litigation to protect the interests of the Servicing Agency. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

APPENDIX B

CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY, OR PROGRAM

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the Servicing Agency under the terms of the Agreement:

1. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that:

In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

2. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Non-discrimination covenants, the Servicing Agency will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.*

3. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the Servicing Agency will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the Servicing Agency and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX C

CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by Servicing Agency pursuant to the provisions of this Agreement:

1. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.
2. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above Non-discrimination covenants, the Servicing Agency will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.*
3. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, the Servicing Agency will there upon revert to and vest in and become the absolute property of the Servicing Agency and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX D

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

A. ASSURANCE OF DISCLOSURE OF LOBBYING ACTIVITIES

Certification for Contracts, Grants, Loans, and Agreements

The person signing this Agreement for the Servicing Agency certifies, to the best of his or her knowledge and belief, that:

No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any 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 grant agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or grant agreement.

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 grant agreement, the undersigned shall complete and submit Standard Form-LLL (Rev. 7-97), "Disclosure of Lobbying Activities," in accordance with its instructions.

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

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352, title. 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.

B. CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

The Servicing Agency certifies that it will, or will continue, to provide a drug-free workplace by:

1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Servicing Agency's workplace, and specifying the actions that will be taken against employees for violation of such prohibition.
2. Establishing an ongoing drug-free awareness program to inform employees about:
 - a. The dangers of drug abuse in the workplace;
 - b. The Servicing Agency's policy of maintaining a drug-free workplace;

- c. Any available drug counseling, rehabilitation, and employee assistance programs; and,
 - d. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
3. Making it a requirement that each employee to be engaged in the performance of work supported by the Agreement be given a copy of the statement required by paragraph 1.
4. Notifying the employee in the statement required by paragraph 1 that, as a condition of employment supported by the Agreement, the employee will:
 - a. Abide by the terms of the statement; and
 - b. Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction.
5. Notifying the agency in writing, within ten calendar days after receiving notice under paragraph 4.b. from an employee or otherwise receiving actual notice of conviction. Employers of convicted employees must provide notice, including position title, to FHWA. Notice shall include the order number of the Agreement.
6. Taking one of the following actions, within 30 days of receiving notice under paragraph 4(b), with respect to any employee who is so convicted:
 - a. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended, or
 - b. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency.
7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs 1, 2, 3, 4, 5, and 6.
8. The Servicing Agency *may*, but is not required to, provide the site for the performance of work done in connection with the Agreement. For the provision of services pursuant to the Agreement, workplaces include outstations, maintenance sites, headquarters office locations, training sites and any other worksites where work is performed that is supported by the Agreement. If the Servicing Agency does so, the Servicing Agency shall identify the Places of Performance by listing the street address, city, county, state, zip code. Also identify if there are workplaces on file that are not identified in this section of the Agreement.

**C. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS --
PRIMARY COVERED TRANSACTIONS
2 CFR Parts 180, 1200, 48 CFR Part 9, and 49 CFR Part 32**

These assurances and certifications are applicable to all construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any

other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200, and 48 CFR Part. 9.

By entering into this Agreement the Servicing Agency is providing the assurances and certifications for First Tier Participants and Lower Tier Participants as set out below.

1. Instructions for Certification – First Tier Participants:

- a. The prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
- c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.
- d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 C.F.R. Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contractor). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers to any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).
- f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph a.2. of this certification; and

4. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

3. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 C.F.R. Parts 180 and 1200)

a. The prospective lower tier participant is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a recipient and subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and

Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

4. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

- a. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.
- b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

D. ASSURANCE OF ADEQUATE FINANCIAL SYSTEMS AND CONTROL OF PROJECT COSTS

1. The Servicing Agency will be reimbursed in accordance with the terms of this Agreement.
2. The Servicing Agency shall have entered into obligations for services and goods associated with the Project prior to seeking reimbursement from the Government. Reimbursement will only be made for expenses incurred after execution of a project agreement.

3. The Servicing Agency shall ensure that the funds provided by the Government are not misappropriated or misdirected to any other account, need, project, line-item, or unrelated activity.
4. Any Federal funds not expended in conjunction with the Project will remain the property of the Government.
5. Financial Management System: By signing this Agreement, the Servicing Agency verifies that it has, or will implement, a financial management system adequate for monitoring the accumulation of costs and that it complies with the financial management system requirements of 2CFR Part 200.302. The Servicing Agency's failure to comply with these requirements may result in Agreement termination.
6. Allowable Costs: Determination of allowable costs will be made in accordance with the applicable Federal cost principles, e.g., 2 CFR Part 200. Disallowed costs are those charges determined to not be allowed in accordance with the applicable Federal cost principles or other conditions contained in this Agreement.

E. TRANSPARENCY ACT REQUIREMENTS

Pursuant to the Federal Funding Transparency and Accountability Act of 2006, as amended (Pub. L. 109-282, as amended by section 6202 of Public Law 110-252, hereafter referred to as "the Transparency Act" or "the Act") and the OMB Interim Final Rule (75 FR 55663 (September 14, 2010) (available at <http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22705.pdf>) (codified at 2 CFR Part 170), the Servicing Agency is required to report as required under the Act: The Servicing Agency shall also report information for its prime contractor.

1. Reporting Obligations

- a. Applicability. Unless the Servicing Agency (hereinafter in this section referred to as "you") are exempt as provided in paragraph 4. of this section, you must report each action that obligates \$25,000 or more in Federal funds for a prime contract to an entity (see definitions in subsection 5. of this section).
- b. Where and when to report.
 1. You must report each obligating action described in subsection 1.a. of this section to <http://www.fsrs.gov>.
 2. For contractor information, report no later than the end of the month following the month in which the contract was executed. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)
- c. What to report. You must report the information about each obligating action that the submission instructions posted at <http://www.fsrs.gov> specify.

2. Reporting Total Compensation of Executives.

a. Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—

1. the total Federal funding authorized to date under this award is \$25,000 or more;
2. in the preceding fiscal year, you received—
 - i. 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - ii. \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. § 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

b. Where and when to report. You must report executive total compensation described in subsection 2.a.. of this section:

1. As part of your registration profile at <https://www.sam.gov>
2. By the end of the month following the month in which this award is made, and annually thereafter.

3. Reporting of Total Compensation of Prime Contractor's Executives.

a. Applicability and what to report. Unless you are exempt as provided in subsection d. of this section, for each prime contractor receiving funds for which reimbursement will be sought, you shall report the names and total compensation of each of the prime contractor's five most highly compensated executives for the prime contractor's preceding completed fiscal year, if—

1. in the prime contractor's preceding fiscal year, the contractor received—
 - i. 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

- ii. \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

2. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

b. Where and when to report. You must report the prime contractor's executive total compensation described in subsection 3.a. of this section:

1. To <http://www.frs.gov>.

2. By the end of the month following the month during which you executed the prime contract. For example, if a prime contract is executed on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the prime contractor by November 30 of that year.

4. Exemptions.

If, in the previous tax year, you or the prime contractor had gross income, from all sources, under \$300,000, you are exempt from the requirements to report prime contracts and the total compensation of the five most highly compensated executives of any prime contractor.

5. Definitions. For purposes of this section:

a. Entity means all of the following, as defined in 2 CFR Part 25:

1. A Governmental organization, which is a State, local government, or Indian tribe;
2. A foreign public entity;
3. A domestic or foreign nonprofit organization;
4. A domestic or foreign for-profit organization;
5. A Federal agency, but only as a contractor or subcontractor to a non-Federal entity.

b. Executive means officers, managing partners, or any other employees in management positions.

c. Total compensation means the cash and noncash dollar value earned by the executive during the Servicing Agency's or prime contractor's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

1. Salary and bonus.
2. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
3. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
4. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
5. Above-market earnings on deferred compensation which is not tax-qualified.
6. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

E. SINGLE AUDIT INFORMATION FOR SERVICING AGENCIES

To maximize the transparency and accountability of funds authorized under the Act as required by Congress and in accordance with 2 CFR 200 "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards", the Servicing Agency agrees to maintain records that identify adequately the source and application of FHWA funds.