

**CLACKAMAS COUNTY – CITY OF HAPPY VALLEY
URBAN GROWTH MANAGEMENT AGREEMENT**

This Urban Growth Management Agreement (“UGMA”), is entered into by and between the City of Happy Valley, an Oregon municipal corporation (“City”) and Clackamas County, a political subdivision of the State of Oregon (“County”) (collectively, the “Parties,” and each individually a “Party”).

RECITALS

WHEREAS, authority is conferred upon local government under ORS 190.010 to enter into an agreement for the performance of any and all functions and activities that the local government, its officers or agencies has authority to perform; and

WHEREAS, the City and the County have a common interest in coordinated comprehensive plans, compatible land uses and coordinated planning of urban facilities within the Happy Valley Urban Planning Area (HVUPA), as described in Exhibit A to this Agreement; and

WHEREAS, the exchange of information should concentrate on issues that may have a significant impact on either Party and should not entail cumbersome procedural requirements that may increase the time necessary to expedite decision making; and

WHEREAS, OAR 660-003-010 requires management plans for unincorporated areas within an urban growth boundary to be set forth in a statement submitted to the Land Conservation and Development Commission (“LCDC”) at the time of acknowledgement request; and

WHEREAS, OAR 660-011-015 requires an Urban Growth Management Agreement (“UGMA”) to specify the entity responsible for the preparation, adoption and amendment of the public facility plan(s); and

WHEREAS, the City and County previously entered into an UGMA on January 30, 1992, and amended on June 19, 2001, which is to be superseded by this Agreement;

NOW THEREFORE, the Parties agree as follows:

AGREEMENT

1. Definitions

As used in this Agreement, the following words shall mean or include:

- 1.1** Comprehensive Plan. The City of Happy Valley Comprehensive Plan, the Clackamas County Comprehensive Plan, and any other plan document described

in ORS 197.015(5) that is adopted by a Party and that applies within the Urban Planning Area.

1.2 Land Use Policies. The whole or any part of any comprehensive plan, subarea comprehensive plan, Title 16 of the City's Municipal Code ("Development Code"), refinement plan, public facility plan developed under OAR Chapter 660, Division I, land use regulation as defined by ORS 197.015(11), or any other generally applicable policy regulating the use or development of land. As applied to Metro, "Land Use Policies" include Planning Goals and Objectives, Regional Urban Growth Goals and Objectives, Functional Plans, and Regional Framework Plans.

1.3 Happy Valley Urban Planning Area. The Happy Valley Urban Planning Area ("HVUPA") includes unincorporated land within the Portland Metropolitan Urban Growth Boundary ("UGB") as illustrated on the map attached as Exhibit A to this Agreement.

2. Terms of this Agreement.

This Agreement supersedes all prior UGMAs between the parties. This UGMA becomes effective upon the Effective Date and continue thereafter for an initial term of five (5) years, unless terminated as provided in this Section or modified consistent with Section 7.4. This Agreement automatically renews for one ten (10) year term unless, not later than 90 days prior to the expiration of the initial term of this UGMA one of the Parties provides the other with written notice that it does not wish to renew the UGMA. Either party may terminate this agreement at any time after ninety (90) days written notice to the other party.

3. Comprehensive Plan Designation/Zoning, Permitting Authority, Annexation and Public Facilities Planning for Lands in the HVUPA.

3.1 Comprehensive Plan/Zoning Map Amendments. The County Comprehensive Plan and zoning shall apply to all unincorporated land within the HVUPA until such time as those lands are annexed into the City. Unless otherwise provided by law, the development of a comprehensive plan and/or comprehensive plan map amendment or zone change for the unincorporated areas within the HVUPA shall be a coordinated joint effort of the Parties. The County shall be responsible for preparing all legislative and quasi-judicial comprehensive plan amendments/zone changes within the HVUPA. The City shall have the unrestricted right to review and comment on all legislative and quasi-judicial comprehensive plan amendments/zone changes prepared by the County within the HVUPA.

3.2 Permitting Authority and Annexation to City. The County Comprehensive Plan and land use regulations shall apply to an application for a permit or other land use review within the HVUPA. The County shall provide notice to the City of all land use applications and proposed legislative amendments to the county comprehensive plan and land use regulations affecting property within the HVUPA. The owner of property that is adjacent to the City (including by

extension of a public right-of-way or body of water) and who is seeking access to City-provided services (for example, Planning, Engineering, or Building Division permits) may be required to consent to annexation to the City.

3.3 Annexation Plan. Any City-initiated Annexation Plan shall be developed consistent with applicable state and regional laws. Opportunity shall be provided to citizens, the County, active Citizen Planning Organizations (CPOs) and affected service providers to review and comment on the Annexation Plan prior to any annexation election. Annexation Plan(s) will include development of public facilities plan(s) for the Annexation Plan area(s).

3.4 Public Facilities Plans. The City shall coordinate the preparation or amendment of public facilities plans within the HVUPA as may be required by OAR Chapter 660, Division 11 (Public Facilities Planning) and applicable sections of ORS Chapter 195 with the appropriate service providers. Upon annexation, an area within the HVUPA shall be provided with public facilities services through a combination of City-provided services and by way of intergovernmental agreements ("IGA's") with the sewer provider (Clackamas County Service District No. 1), water providers (Sunrise Water Authority and Clackamas River Water), county road services (Clackamas County Department of Transportation and Development), fire prevention service (Clackamas Fire District No. 1), parks services (North Clackamas Parks & Recreation District), open space (Metro), mass transit services (Tri-Met), and school facility planning (North Clackamas School District No. 12).

4. City's Responsibilities

4.1 Functions. All functions not specifically listed in this Section or any Exhibit as a City responsibility shall remain the County's responsibility. The City shall timely distribute studies, information, requests, data and personal communications to the County on matters regarding infrastructure or policy issues that affect or are coordinated by the County.

4.2 Road Jurisdiction. The City shall assume jurisdiction of any County road classified by the County as minor arterial, collector, connector, or local street that is within or abutting an area that is annexed to the City. The transfer shall be consistent with the provisions of ORS 373.270. When a road is transferred, the County shall upgrade the road to a Pavement Quality Index (PQI) standard of '8' or provide the City with sufficient funds to allow the City to achieve the same standard. Any road that has been constructed to City required standards shall be considered to have a minimum PQI of '8'.

Subsequent to annexation but prior to transfer of either a collector or local street to the City, the following shall apply:

A. For development project(s) within the city limits on a County collector or

local street, the County shall determine if proposed improvements to the roadway can be built within the existing right-of-way to City standards.

B. If so, the County shall issue all appropriate permits directly to the City or developer and the City or developer shall thereafter submit a set of plans and any revisions approved by the City to the County in a timely fashion.

C. Following construction, inspection and acceptance by the City, the full section of the roadway including the roadway improvements shall thereafter be maintained by the City. The City agrees to initiate jurisdictional transfer of the full width of the portion of the road to which the improvements are made, not less than once a year.

4.3. City Notice to and Coordination with the County and Community Planning Organizations (CPOs)

A. The City shall provide notice to the County and the appropriate Community Planning Organization (CPO) at least 20 days prior to the first public hearing on all proposed annexations or extraterritorial service extensions into unincorporated areas.

B. The City shall provide notice to the County and appropriate CPO at least 20 days prior to the first public hearing on all proposed legislative changes to the City comprehensive plan or any quasi-judicial action that affects properties adjacent to incorporated areas.

C. The City shall notify and coordinate with the County on amendments to the City's Transportation System Plan (TSP).

D. City shall provide notice and a service-provider comment letter to the applicable County Department in conjunction with the City's review of any land use application or building permit in which the proposed development activity might affect County facilities.

5. County's Responsibilities.

5.1. Development Proposals for Unincorporated HVUPA Areas.

A. County shall retain responsibility and authority for all implementing regulations and land use actions for all unincorporated lands within the HVUPA, until such time as lands are annexed to the City.

B. County shall not form any new county service districts or support the annexation of land within the unincorporated HVUPA to such districts or to other service districts without first conferring with the City.

5.2. County Notice to and Coordination with the City for Lands in HVUPA.

- A. The County shall provide notice to the City at least 20 days prior to the first scheduled public hearing on a quasi-judicial action or proposed legislative change to the County comprehensive plan text or implementing ordinances affecting land within the HVUPA.
- B. The County shall provide notice to the City at least 20 days prior to a staff decision on an application for administrative action as provided in the County's Zoning and Development Ordinance for property within the HVUPA.
- C. The County shall notify and invite City staff to participate in or comment on pre-application meetings for design review, conditional use permits, partitions, subdivisions or other significant development proposals within unincorporated areas of the HVUPA at least 15 days prior to meeting.
- D. Any amendments proposed by the County to the UGB within one mile of the HVUPA will be reviewed by the City and the County prior to submission to Metro.
- E. In any land use proceeding affecting property within the HVUPA, the County shall enter all written comments of the City into the public record and shall consider the same in the exercise of its planning and plan implementation responsibilities.
- F. The County shall organize and track County participation, comments, issues and conditions of approval, pre-application conferences, land use applications, construction plan review, pre-construction meetings, building permit release letters, occupancy permits and any other permit or process that involves coordination with the City.

6. Mutual Indemnification

- 6.1 Subject to Article XI of the Oregon Constitution and ORS 30.260 to 30.300, the City will hold harmless, defend and indemnify the County, its elected officials, officers, and employees, for and against any claims or damages to property or injury to persons, resulting in whole or part from City's acts or omissions in performing any obligations under this Agreement.
- 6.2 Subject to Article XI of the Oregon Constitution and ORS 30.260 to 30.300, the County will hold harmless, defend and indemnify the City, its elected officials officers and employees for and against any claims or damages to property or injury to persons, resulting in whole or part from the County's acts or omissions in performing any obligation under this Agreement.

7. General Provisions.

- 7.1 Applicable Law. This Agreement shall be governed by Oregon law and the

Parties agree to submit to the jurisdiction of the courts of the State of Oregon.

7.2 Insurance Coverage.

- A. Commercial General Liability Insurance. City shall obtain and maintain at all times during the course of this Agreement commercial general liability insurance coverage pursuant to Oregon Tort Claims Act and subject to the limits of the Act covering Bodily Injury and Property Damage on an "occurrence" form in the amount of not less than \$1 Million per occurrence/\$2 Million general aggregate for the protection of the County, its officers, elected officials and employees. This coverage shall include Contractual Liability insurance for the indemnity provided under this Agreement.
- B. Additional Insured Provision. The City's insurance shall include "Clackamas County, its agents, officers and employees" as an additional insured.
- C. Notice of Cancellation. There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew the City's insurance coverage without 60 days written notice to the County. Any failure to comply with the provision will not affect the insurance coverage provided to the County. The 60 days notice of cancellation provision shall be physically endorsed on to the policy.

7.3 Effective Date and Term. This Agreement shall become effective on the last date signed below and shall continue in effect according to its Terms.

7.4 Amendment. This Agreement may be amended at any time with the written consent of all Parties.

7.5 Assignment. Except as otherwise provided herein, the Parties may not assign any of their rights or responsibilities under this Agreement without prior written consent from the other Party, except that a Party may delegate or subcontract for performance of any of their responsibilities under this Agreement.

7.6 Dispute Resolution.

- A. Subject to mutually agreed upon extensions of time in writing, failure or unreasonable delay by any party to substantially perform any material provision of this agreement shall constitute default. In the event of an alleged default or breach of any term or condition of this agreement, the Party alleging such default or breach shall give the other Party not less than 30 days written notice specifying the nature of the alleged default and the manner in which the default may be cured satisfactorily. During this 30-day period, the Party shall not be considered in default for purposes of termination or instituting legal proceedings.

- B. The Parties shall first attempt to resolve the dispute by negotiation, followed by mediation, if negotiation fails to resolve the dispute.
- C. Step One: (Negotiation). Each Party will select one or more person(s) to negotiate on behalf of the entity they represent. Those person(s) shall then meet and attempt to resolve the issue. If the dispute is resolved, there shall be a written determination of such resolution, signed by a representative of each Party and ratified by the governing bodies that shall then be binding.
- D. Step Two: (Mediation). If the dispute cannot be resolved within thirty (30) days at Step One, the Parties shall submit the matter to mediation. The Parties shall attempt to agree on a mediator. If they cannot agree, the Parties shall request a list of five (5) mediators from an entity or firm providing mediation services. The Parties will attempt to mutually agree on a mediator from the list provided, but if they cannot agree, each Party shall select one (1) name. The two selected shall select a third person who shall serve as the mediator. The common costs of mediation borne equally by the Parties with each bearing its own costs and fees. If the issue is resolved at this step, a written determination shall be signed by each Party and approved by the governing bodies.
- E. Step Three (Legal Action). If the dispute remains unresolved following mediation, the Parties may seek remedy by appropriate proceedings filed in Clackamas County Circuit Court. In any such judicial proceeding, each Party shall be responsible for its own costs and fees.

7.7 Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which may be executed by any one or more of the parties hereto, and all of such counterparts shall constitute one Agreement. Counterparts of executed signature pages may be attached to any one or more counterparts of this Agreement. To facilitate execution of this Agreement, the Parties may execute by facsimile transmission counterparts of the signature pages.

7.8 Severability. In the event a court of competent jurisdiction deems any portion or part of this Agreement to be unlawful or invalid, only that portion of part of the Agreement shall be considered unenforceable. The remainder of this Agreement shall continue to be valid.

7.9 Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes any prior oral or written agreements or representations relating to the Property. No waiver, consent, modification or change of terms of this Agreement shall bind the Parties unless in writing and signed by each party.

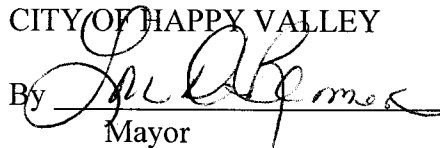
7.10 Notices. All notices or other communications required or permitted under this Agreement shall be in writing, and shall be mailed or sent by scanned document (e-mailed) or faxed with hard copy to follow by post, addressed as follows:

To City: City of Happy Valley
Economic & Community Development Department
16000 SE Misty Drive
Happy Valley, OR 97086

To County: Clackamas County Planning & Zoning Division
150 Beaver Creek Rd.
Oregon City, OR 97045


IN WITNESS WHEREOF, the respective parties have caused to be signed in their behalf to make and enter into this Agreement this 18th day of November, 2013.

CITY OF HAPPY VALLEY

By 
Mayor

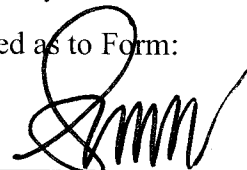
Date 11/18/13

CLACKAMAS COUNTY

By 
Chair, Board of County Commissioners

Date 11-17-13
H.I.

Approved as to Form:

By 
County Counsel






Date 11/7/13

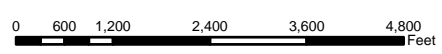
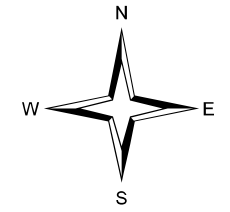
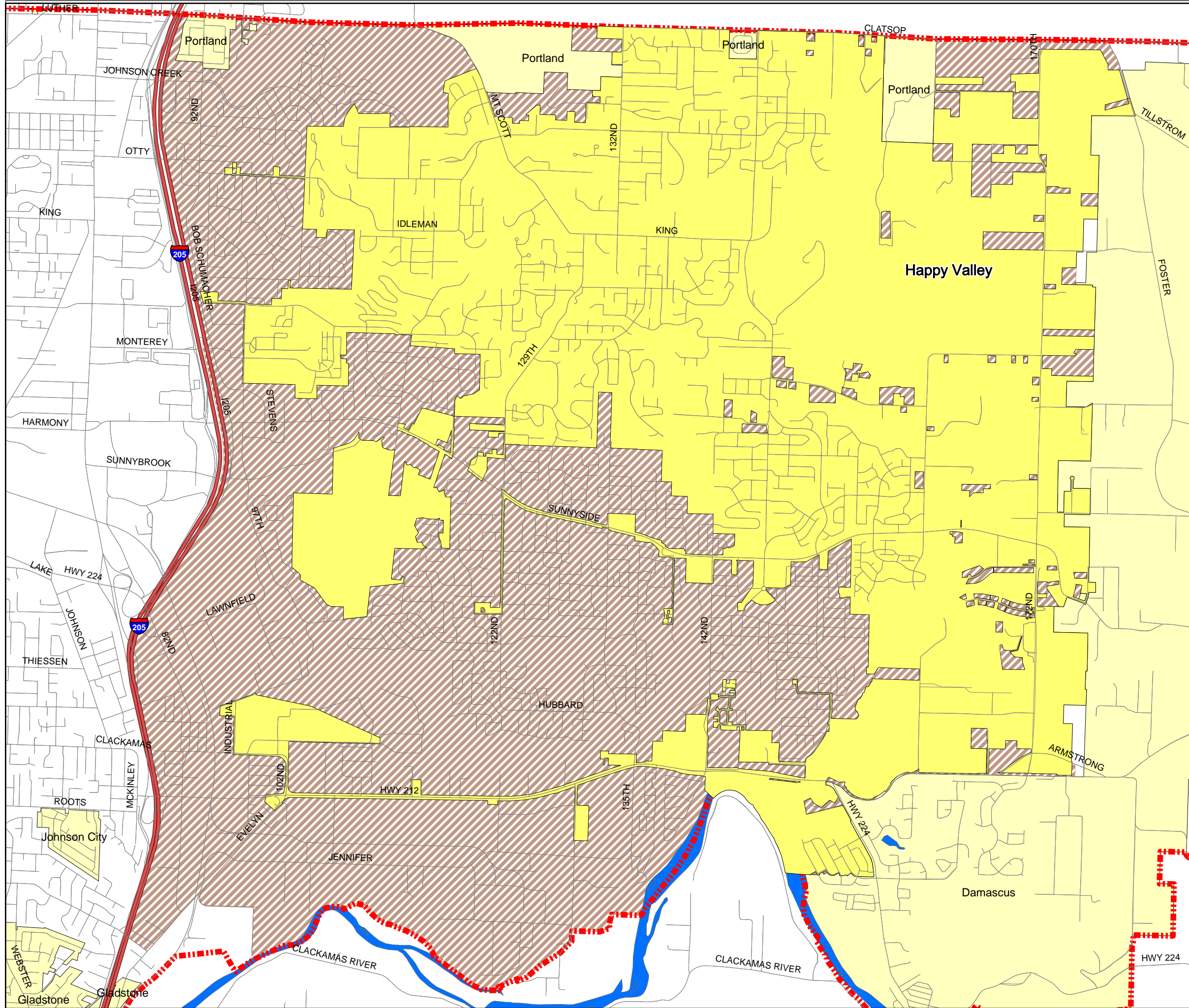
EXHIBIT "A" – Happy Valley Urban Planning Area



City of Happy Valley
**Happy Valley Final
Urban Planning Area
Exhibit A**

Legend

-  Urban Growth Boundary
-  Taxlots
-  Happy Valley
-  Other Cities
-  HV Urban Planning Area



Source: Data from Clackamas County GIS (2012)
The information on this map was derived from digital databases from the City of Happy Valley. Care was taken in the creation of this map but it is provided "as is". The City of Happy Valley cannot accept any responsibility for any errors, omissions, or positional accuracy, and therefore, there are no warranties which accompany this product. Although information from Land Surveys may have been used in the creation of this product, in no way does this product represent or constitute a Land Survey. Users are cautioned to field verify information on this product before making any decisions.