

February 27, 2020

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of a Federal Subrecipient Grant Agreement with  
Clackamas County Children's Commission to provide Healthy Families services

<b>Purpose/Outcome</b>	Clackamas County Children's Commission (CCCC) will provide Healthy Family community-based services designed to increase the strength and stability of high risk families, prenatally through their child's third birthday, and in some cases include a transition period. Services range from universal basic short-term services to long-term intensive home visitation for high risk families.
<b>Dollar Amount and Fiscal Impact</b>	Agreement has a maximum value of \$1,706,154.95. County General Funds are included in this contract amount.
<b>Funding Source</b>	State of Oregon, Dept of Education through its Early Learning Division No. 12573: <ul style="list-style-type: none"> <li>• Oregon State General Fund (\$1,304,420)</li> <li>• Federal Title IV-B2 for Family Support Catalog of Federal Award (CFDA) #93.556 (\$169,960)</li> <li>• Medicaid from Oregon Health Authority (\$186,774.95)</li> </ul> County General Fund (\$45,000)
<b>Duration</b>	October 1, 2019 to September 30, 2021
<b>Previous Board Action/Review</b>	N/A
<b>Strategic Plan Alignment</b>	1. Individuals and families in need are healthy and safe 2. Ensure safe, healthy and secure communities
<b>Counsel Review</b>	County Counsel reviewed and approved this document on February 5, 2020
<b>Contact Person</b>	Korene Mather 503-650-3339
<b>Contract No.</b>	CFCC 9623

**BACKGROUND:**

The Children, Family & Community Connections Division of the Health, Housing and Human Services Department requests approval of a Federal Subrecipient Agreement with Clackamas County Children's Commission to provide Healthy Family Services. CCCC is the only certified provider of Healthy Family services in Clackamas County. Healthy Families Oregon (HFO) is an evidence-based, voluntary, home visiting program nationally accredited by Healthy Families America (HFA). HFO contributes to economic prosperity of Oregon by preventing child abuse and neglect, promoting healthy child development, improving family self-sufficiency, and helping parents prepare their children for kindergarten.

This Federal Subrecipient Agreement is effective upon signature by all parties for services starting on October 1, 2019 and terminating on September 30, 2021. This Agreement has a maximum value of \$1,706,154.95.

*Healthy Families. Strong Communities.*

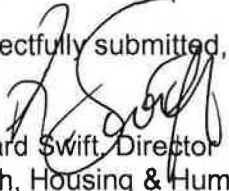
2051 Kaen Road, Oregon City, OR 97045 • Phone (503) 650-5697 • Fax (503) 655-8677

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

**RECOMMENDATION:**

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

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. Swift', is written over the printed name and title.

Richard Swift, Director  
Health, Housing & Human Services

**CLACKAMAS COUNTY, OREGON  
FEDERAL SUBRECIPIENT GRANT AGREEMENT – 20-028**

Program Name: **Healthy Families**  
Program/Project Number: CFCC-

This Agreement is between **Clackamas County, Oregon**, acting by and through its Health, Housing & Human Services Children, Family & Community Connections Division ("COUNTY") and **Clackamas County Children's Commission** ("SUBRECIPIENT"), an Oregon Non-profit Organization.

**COUNTY Data**

Grant Accountant: <b>Michael Morasko</b>	Program Manager: <b>Chelsea Hamilton</b>
Clackamas County Finance 2051 Kaen Road Oregon City, OR 97045 (503) 650-5435 mmorasko@clackamas.us	Children, Family & Community Connections 150 Beavercreek Rd. Oregon City, OR 97045 (503) 650-5682 chamilton@clackamas.us

**SUBRECIPIENT Data**

Finance/Fiscal Representative: <b>Darcee Kilsdonk</b>	Program Representative: <b>Beth Kersens</b>
Clackamas County Children's Commission 16518 SE River Road Milwaukie, OR 97267 (503) 675-4565 darceek@cccchs.org	Clackamas County Children's Commission 16518 SE River Road Milwaukie, OR 97267 (503) 546-6533 ext 1 bkersens@healthyfamiliescc.org
FEIN: 93-0624672	

**RECITALS**

1. Clackamas County Children's Commission (SUBRECIPIENT) is the only certified provider of Healthy Family services in Clackamas County. The Healthy Family program promotes the development of healthy, thriving children, and strong, nurturing families, typically initiated prenatally and at the time of birth with high risk families, and following the Healthy Families America program Model.
2. SUBRECIPIENT will provide community-based services designed to increase the strength and stability of high risk families, prenatally through their child's third birthday, and in some cases include a transition period following the child's birthday. Services range from universal basic short-term services, to long-term intensive home visitation for high risk families.
3. The Grant Agreement is funded by Oregon Department of Education, Early Learning Division for the Healthy Families Oregon program and County General Fund.
4. This Grant Agreement of financial assistance sets forth the terms and conditions pursuant to which SUBRECIPIENT agrees on delivery of the Program.

NOW THEREFORE, according to the terms of this SUBRECIPIENT Grant Agreement (this "Agreement") the COUNTY and SUBRECIPIENT agree as follows:

## AGREEMENT

1. **Term and Effective Date.** This Agreement shall become effective on the date it is fully executed and approved as required by applicable law. Funds issued under this Agreement may be used to reimburse SUBRECIPIENT for expenses approved in writing by COUNTY relating to the project incurred no earlier than **October 1, 2019** and not later than **September 30, 2021**, unless this Agreement is sooner terminated or extended pursuant to the terms hereof. No grant funds are available for expenditures after the expiration date of this Agreement.
2. **Program.** The Program is described in Attached Exhibit A-1: SUBRECIPIENT Scope of Work. SUBRECIPIENT agrees to perform the Program in accordance with the terms and conditions of this Agreement.
3. **Standards of Performance.** SUBRECIPIENT shall perform all activities and programs in accordance with the requirements set forth in this Agreement and all applicable laws and regulations. Furthermore, SUBRECIPIENT shall comply with the requirements set by Oregon Department of Education Early Learning Division ("ELD") (Federal award date: 10/1/19) that is the source of federal grant funding, in addition to compliance with requirements of Title 45 of the Code of Federal Regulations ("CFR"), Part 96.70-96.74, Sub-Part G. SUBRECIPIENT shall further comply with any requirements required by the State of Oregon, Department of Education Early Learning Division, together with any and all terms, conditions, and other obligations as may be required by the applicable local, State or Federal agencies providing funding for performance under this Agreement, whether or not specifically referenced herein. SUBRECIPIENT agrees to take all necessary steps, and execute and deliver any and all necessary written instruments, to perform under this Agreement including, but not limited to, executing all additional documentation necessary to comply with applicable State or Federal funding requirements.
4. **Grant Funds.** COUNTY's funding for this Agreement is as follows:  
The maximum, not to exceed, grant amount that the COUNTY will pay is **\$1,706,154.95**.
  - State of Oregon, Department of Education, Early Learning Division Grant No. 12573:
    - Oregon State General Fund (**\$1,304,420**)
    - Federal Title IV-B2 for family Support CFDA #93.556 (**\$169,960, FAIN: 1936001958A3**)
    - Medicaid funding from Oregon Health Authority (**\$186,774.95**)
  - Clackamas County General Fund (**\$45,000**)
5. **Disbursements.** This is a cost reimbursement grant and disbursements will be made monthly in accordance with the requirements contained in Exhibit D: Financial Reporting and Reimbursement Request.  
  
Failure to comply with the terms of this Agreement may result in withholding of payment.
6. **Amendments.** The terms of this Agreement shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by both parties. SUBRECIPIENT must submit a written request including a justification for any amendment to COUNTY in writing at least forty-five (45) calendar days before this Agreement expires. No payment will be made for any services performed before the beginning date or after the expiration date of this Agreement except for the final payment. The final request for payment must be submitted to COUNTY no later than fifteen (15) days after the end date of this Agreement. If the maximum compensation amount is increased by amendment, the amendment must be fully executed before SUBRECIPIENT performs work subject to the amendment.

7. **Termination.** This Agreement may be terminated by the mutual consent of both parties or by a party upon written notice from one to the other upon thirty (30) business days-notice. This notice may be transmitted in person, by certified mail, facsimile, or by email.
8. **Funds Available and Authorized.** COUNTY certifies that funds sufficient to pay for this Agreement have been obligated to COUNTY. SUBRECIPIENT understands and agrees that payment of amounts under this Agreement is contingent on COUNTY receiving appropriations or other expenditure authority sufficient to allow COUNTY, in the exercise of its sole administrative discretion, to continue to make payments under this Agreement.
9. **Future Support.** COUNTY makes no commitment of future support and assumes no obligation for future support for the activity contracted herein except as set forth in this agreement.
10. **Administrative Requirements.** SUBRECIPIENT agrees to its status as a SUBRECIPIENT, and accepts among its duties and responsibilities the following:
  - a) **Financial Management.** SUBRECIPIENT shall comply with Generally Accepted Accounting Principles ("GAAP") or another equally accepted basis of accounting, use adequate internal controls, and maintain necessary sources documentation for all costs incurred.
  - b) **Revenue Accounting.** Grant revenue and expenses generated under this Agreement should be recorded in compliance with generally accepted accounting principles and/or governmental accounting standards. This requires that the revenues are treated as unearned income or "deferred" until the compliance requirements and objectives of the grant have been met. Revenue may be recognized throughout the life cycle of the grant as the funds are "earned." All grant revenues not fully earned and expended in compliance with the requirements and objectives at the end of the period of performance must be returned to the County within 15 days.
  - c) **Personnel.** If SUBRECIPIENT becomes aware of any likely or actual changes to key systems, or grant-funded program personnel or administration staffing changes, SUBRECIPIENT shall notify COUNTY in writing within 30 days of becoming aware of the likely or actual changes and a statement of whether or not SUBRECIPIENT will be able to maintain compliance at all times with all requirements of this Agreement.
  - d) **Cost Principles.** SUBRECIPIENT shall administer the award in conformity with 2 CFR 200, Subpart E. These cost principles must be applied for all costs incurred whether charged on a direct or indirect basis. Costs disallowed by the Federal government shall be the liability of SUBRECIPIENT.
  - e) **Budget.** SUBRECIPIENT use of funds may not exceed the amounts specified in the Exhibit B: SUBRECIPIENT Program Budget. SUBRECIPIENT may not transfer grant funds between budget lines without the prior written approval of COUNTY. At no time may budget modifications change the scope of the original grant application or agreement.
  - f) **Indirect Cost Recovery.** SUBRECIPIENT has been assign an indirect cost rate of 7.6% on Title IV-B2 funding and an indirect rate of 11.1% on State General funding, which have been approved for use by SUBRECIPIENT by the Oregon Department of Education and is incorporated by reference into SUBRECIPIENT program budget in Exhibit B.
  - g) **Research and Development.** SUBRECIPIENT certifies that this award is not for research and development purposes.
  - h) **Allowable Uses of Funds.** SUBRECIPIENT shall use funds only for those purposes authorized in this Agreement.

- i) **Period of Availability.** SUBRECIPIENT may charge to the award only allowable costs resulting from obligations incurred during the term and effective date. Cost incurred prior or after this date will be disallowed.
- j) **Match.** Matching funds are not required for this Agreement.
- k) **Payment.** Routine requests for reimbursement should be submitted monthly by the 15<sup>th</sup> of the following month using the form and instructions in Exhibit D: Financial Reporting and Reimbursement Request. SUBRECIPIENT must submit a final request for payment no later than fifteen (15) days after the end date of this Agreement.
- l) **Performance and Financial Reporting.** SUBRECIPIENT must submit Performance Reports according to the schedule specified in Exhibit A-2: Performance Reporting Schedule and Work Plan Quarterly Report. SUBRECIPIENT must submit Financial Reports as specified in Exhibit D: Financial Reporting and Reimbursement Request. All reports must be submitted on the templates provided by COUNTY, must reference this agreement number, and be signed and dated by an authorized official of SUBRECIPIENT.
- m) **Closeout.** COUNTY will closeout this award when COUNTY determines that all applicable administrative actions and all required work have been completed by SUBRECIPIENT, pursuant to 2 CFR 200.343—*Closeout*. SUBRECIPIENT must liquidate all obligations incurred under this award and must submit all financial, performance, and other reports as required by the terms and conditions of the Federal award and/or COUNTY, no later than 15 calendar days after the end date of this agreement. At closeout, SUBRECIPIENT must account for residual supplies valued over \$5,000 in the aggregate that were purchased with Federal funds authorized by this Agreement. Compensation to the Federal Agency may be required for residual supplies valued over \$5,000 per 2 CFR 200.314.
- n) **Universal Identifier and Contract Status.** SUBRECIPIENT shall comply with 2 CFR 25.200-205 and apply for a unique universal identification number using the Data Universal Numbering System (“DUNS”) as required for receipt of funding. In addition, SUBRECIPIENT shall register and maintain an active registration in the Central Contractor Registration database, now located at <http://www.sam.gov>.
- o) **Suspension and Debarment.** SUBRECIPIENT shall comply with 2 CFR 180.220 and 901. This common rule restricts subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities. SUBRECIPIENT is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. SUBRECIPIENT may access the Excluded Parties List System at <http://www.sam.gov>. The Excluded Parties List System contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Orders 12549 and 12689. Awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.
- p) **Lobbying.** SUBRECIPIENT certifies (Exhibit C: Lobbying) that no portion of the Federal grant funds will be used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law and shall abide by 2 CFR 200.450 and the Byrd Anti-Lobbying Amendment 31 U. S. C. 1352. In addition, SUBRECIPIENT certifies that it is a nonprofit organization described in Section 501(c) (4) of the Code, but does not and will not engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act.
- q) **Audit.** SUBRECIPIENT shall comply with the audit requirements prescribed in the Single Audit Act Amendments and the new Uniform Administrative Requirements, Cost Principles, and Audit

Requirements for Federal Awards, located in 2 CFR 200.501. SUBRECIPIENT expenditures of \$750,000 or more in Federal funds require an annual Single Audit. SUBRECIPIENT is required to hire an independent auditor qualified to perform a Single Audit. Subrecipients of Federal awards are required under the Uniform Guidance to submit their audits to the Federal Audit Clearinghouse ("FAC") within 9 months from SUBRECIPIENT'S fiscal year end or 30 days after issuance of the reports, whichever is sooner. The website for submissions to the FAC is <https://harvester.census.gov/facweb/>. At the time of submission to the FAC, SUBRECIPIENT will also submit a copy of the audit to COUNTY. If requested and if SUBRECIPIENT does not meet the threshold for the Single Audit requirement, SUBRECIPIENT shall submit to COUNTY a financial audit or independent review of financial statements within 9 months from SUBRECIPIENT'S fiscal year end or 30 days after issuance of the reports, whichever is sooner

- r) **Monitoring.** SUBRECIPIENT agrees to allow COUNTY access to conduct site visits and inspections of financial records for the purpose of monitoring in accordance with 2 CFR 200.331. COUNTY, the Federal government, and their duly authorized representatives shall have access to such financial records and other books, documents, papers, plans, records of shipments and payments and writings of SUBRECIPIENT that are pertinent to this Agreement, whether in paper, electronic or other form, to perform examinations and audits and make excerpts and transcripts. Monitoring may be performed onsite or offsite, at COUNTY's discretion. Depending on the outcomes of the financial monitoring processes, this Agreement shall either a) continue pursuant to the original terms, b) continue pursuant to the original terms and any additional conditions or remediation deemed appropriate by COUNTY, or c) be de-obligated and terminated.
- s) **Record Retention.** SUBRECIPIENT will retain and keep accessible all such financial records, books, documents, papers, plans, records of shipments and payments and writings for a minimum of three (3) years following the Project End Date (September 30, 2021), or such longer period as may be required by applicable law, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later.
- t) **Fiduciary Duty.** SUBRECIPIENT acknowledges that it has read the award conditions and certifications, that it understands and accepts those conditions and certifications, and that it agrees to comply with all the obligations, and be bound by any limitations applicable to COUNTY, as grantee, under those grant documents.
- u) **Failure to Comply.** SUBRECIPIENT acknowledges and agrees that this agreement and the terms and conditions therein are essential terms in allowing the relationship between COUNTY and SUBRECIPIENT to continue, and that failure to comply with such terms and conditions represents a material breach of the original contract and this agreement. Such material breach shall give rise to COUNTY's right, but not obligation, to withhold SUBRECIPIENT grant funds until compliance is met, reclaim grant funds in the case of omissions or misrepresentations in financial or programmatic reporting, or to terminate this relationship including the original contract and all associated amendments.

#### 11. Compliance with Applicable Laws

- a) **Public Policy.** SUBRECIPIENT expressly agrees to comply with all public policy requirements, laws, regulations, and executive orders issued by the Federal government, to the extent they are applicable to the Agreement: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) all regulations and administrative rules established pursuant to the foregoing laws; and (ix) all other applicable

requirements of federal and state civil rights and rehabilitation statutes, rules and regulations; and as applicable to SUBRECIPIENT.

- b) **State Statutes.** SUBRECIPIENT expressly agrees to comply with all statutory requirements, laws, rules, and regulations issued by the State of Oregon, to the extent they are applicable to the agreement.
- c) **Conflict Resolution.** If conflicts are discovered among federal, state and local statutes, regulations, administrative rules, executive orders, ordinances and other laws applicable to the Services under the Agreement, SUBRECIPIENT shall in writing request COUNTY resolve the conflict. SUBRECIPIENT shall specify if the conflict(s) create a problem for the design or other Services required under the Agreement.
- d) **Confidential Information Definition.** SUBRECIPIENT acknowledges it and its employees or agents may, in the course of performing its responsibilities, be exposed to or acquire information that is: (i) confidential to the State of Oregon or Project participants or (ii) the disclosure of which is restricted under federal or state law, including without limitation: (a) personal identifiable information, as that term is used in ORS 646A.602(11), (b) social security numbers, and (c) information protected by the federal Family Educational Rights and Privacy Act under 20 USC § 1232g (items (i) and (ii) separately and collectively "Confidential Information").
- e) **Nondisclosure.** SUBRECIPIENT agrees to hold Confidential Information as required by any applicable law and in all cases in strict confidence, using at least the same degree of care SUBRECIPIENT uses in maintaining the confidentiality of its own confidential information. SUBRECIPIENT may not copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties, or use Confidential Information except as is allowed by law and for the Project activities and SUBRECIPIENT must advise each of its employees and agents of these restrictions. SUBRECIPIENT must assist the State of Oregon in identifying and preventing any unauthorized use or disclosure of Confidential Information. SUBRECIPIENT must advise COUNTY immediately if SUBRECIPIENT learns or has reason to believe any Confidential Information has been, or may be, used or disclosed in violation of the restrictions in this Section. SUBRECIPIENT must, at its expense, cooperate with COUNTY and the State of Oregon in seeking injunctive or other equitable relief, in the name of the State of Oregon, COUNTY or SUBRECIPIENT, to stop or prevent any use or disclosure of Confidential Information. At the State of Oregon or COUNTY's request, SUBRECIPIENT must return or destroy any Confidential Information. If the State of Oregon or COUNTY requests SUBRECIPIENT to destroy any Confidential Information, SUBRECIPIENT must provide COUNTY and the State of Oregon with written assurance indicating how, when and what information was destroyed.
- f) **Mileage reimbursement.** If mileage reimbursement is authorized in SUBRECIPIENT budget or by the written approval of COUNTY, mileage must be paid at the rate established by SUBRECIPIENT'S written policies covering all organizational mileage reimbursement or at the IRS mileage rate at the time of travel, whichever is lowest.
- g) **Human Trafficking.** In accordance with 2 CFR Part 175, SUBRECIPIENT, its employees, contractors and subrecipients under this Agreement and their respective employees may not:
  - 1) Engage in severe forms of trafficking in persons during the period of the time the award is in effect;
  - 2) Procure a commercial sex act during the period of time the award is in effect; or
  - 3) Used forced labor in the performance of the Agreement or subaward under this Agreement, as such terms are defined in such regulation.

SUBRECIPIENT must inform COUNTY immediately of any information SUBRECIPIENT receives from any source alleging a violation of any of the above prohibitions in the terms of this



Agreement. COUNTY may terminate this Agreement, without penalty, for violation of these provisions. COUNTY's right to terminate this Agreement unilaterally, without penalty, is in addition to all other remedies under this Agreement. SUBRECIPIENT must include these requirements in any subaward made to public or private entities under this Agreement.

## 12. Federal and State Procurement Standards

- a) All procurement transactions, whether negotiated or competitively bid and without regard to dollar value, shall be conducted in a manner so as to provide maximum open and free competition. All sole-source procurements in excess of \$5,000 must receive prior written approval from COUNTY in addition to any other approvals required by law applicable to SUBRECIPIENT. Justification for sole-source procurement in excess of \$5,000 should include a description of the project and what is being contracted for, an explanation of why it is necessary to contract noncompetitively, time constraints and any other pertinent information. Intergovernmental agreements are excluded from this provision.
- b) SUBRECIPIENT shall be alert to organizational conflicts of interest or non-competitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. SUBRECIPIENT shall follow chapter 244 of the Oregon Government Ethics Law relating to conflicts of interest. Contractors that develop or draft specifications, requirements, statements of work, and/or solicitations for proposals for a proposed procurement shall be excluded from bidding or submitting a proposal to compete for the award of such procurement. Any request for exemption must be submitted in writing to COUNTY.
- c) SUBRECIPIENT agrees that, to the extent they use contractors or subcontractors, SUBRECIPIENT shall use small, minority-owned, and/or women-owned businesses when possible.

## 13. General Agreement Provisions.

- a) **Indemnification.** SUBRECIPIENT agrees to indemnify and hold COUNTY harmless with respect to any claim, cause, damage, action, penalty or other cost (including attorney's and expert fees) arising from or related to SUBRECIPIENT's negligent or willful acts or those of its employees, agents or those under SUBRECIPIENT's control. SUBRECIPIENT is responsible for the actions of its own agents and employees, and COUNTY assumes no liability or responsibility with respect to SUBRECIPIENT's actions, employees, agents or otherwise with respect to those under its control.
- b) **Insurance.** During the term of this agreement, SUBRECIPIENT shall maintain in force, at its own expense, each insurance noted below:
  - 1) **Commercial General Liability.** SUBRECIPIENT shall obtain, at SUBRECIPIENT's expense, and keep in effect during the term of this agreement, Commercial General Liability Insurance covering bodily injury, death, and property damage on an "occurrence" form in the amount of not less than \$1,000,000 per occurrence/ \$2,000,000 general aggregate for the protection of COUNTY, its officers, commissioners, and employees. This coverage shall include Contractual Liability insurance for the indemnity provided under this agreement. This policy(s) shall be primary insurance as respects to COUNTY. Any insurance or self-insurance maintained by COUNTY shall be excess and shall not contribute to it.
  - 2) **Commercial Automobile Liability.** Automobile liability insurance covering SUBRECIPIENT's business use shall obtain at SUBRECIPIENT expense, and keep in effect during the term of this agreement, Commercial Automobile Liability coverage

including coverage for all owned, hired, and non-owned vehicles. The combined single limit per occurrence shall not be less than \$1,000,000.

- 3) **Professional Liability.** If the Agreement involves the provision of professional services, SUBRECIPIENT shall obtain and furnish COUNTY evidence of Professional Liability Insurance covering any damages caused by an error, omission, or negligent act related to the services to be provided under this agreement, with limits not less than \$2,000,000 per occurrence for the protection of COUNTY, its officers, commissioners and employees against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and damages because of negligent acts, errors and omissions in any way related to this agreement. COUNTY, at its option, may require a complete copy of the above policy.
- 4) **Workers' Compensation.** Insurance in compliance with ORS 656.017, which requires all employers that employ subject workers, as defined in ORS 656.027, to provide workers' compensation coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). If contractor is a subject employer, as defined in ORS 656.023, contractor shall obtain employers' liability insurance coverage limits of not less than \$1,000,000.
- 5) **Additional Insured Provisions.** All liability insurance, except for professional liability, workers' compensation, network security and private liability (if applicable), required under this Grant must include an additional insured endorsement specifying "Clackamas County, its agents, officers, and employees" as an additional insured, but only with respect to SUBRECIPIENT's activities under this agreement.
- 6) **Minors.** SUBRECIPIENT shall carry Abuse and Molestation Insurance as an endorsement to the Commercial General Liability policy, in a form and with coverage that are satisfactory to COUNTY covering damages arising out of actual or threatened physical abuse, mental injury, sexual molestation, negligent: hiring, employment, supervision, investigation, reporting to proper authorities, and retention of any person for whom the SUBRECIPIENT is responsible including but not limited to SUBRECIPIENT's employees and volunteers. Policy endorsement's definition of an insured shall include the SUBRECIPIENT, and the SUBRECIPIENT'S employees and volunteers. Coverage shall be written on an occurrence basis in an amount of not less than \$1,000,000 per occurrence. Any annual aggregate limit shall not be less than \$3,000,000. These limits shall be exclusive to this required coverage. Incidents related to or arising out of physical abuse, mental injury, or sexual molestation, whether committed by one or more individuals, and irrespective of the number of incidents or injuries or the time period or area over which the incidents or injuries occur, shall be treated as a separate occurrence for each victim. Coverage shall include the cost of defense and the cost of defense shall be provided outside the coverage limit.
- 7) **Notice of Cancellation.** There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 30 days written notice to COUNTY. Any failure to comply with this provision will not affect the insurance coverage provided to COUNTY. The 30 day notice of cancellation provision shall be physically endorsed on to the policy.
- 8) **Insurance Carrier Rating.** Coverage provided by SUBRECIPIENT must be underwritten by an insurance company deemed acceptable by COUNTY. Insurance coverage shall be provided by companies admitted to do business in Oregon or, in the alternative, rated A- or better by Best's Insurance Rating. COUNTY reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.

- 9) **Certificates of Insurance.** As evidence of the insurance coverage required by this agreement, SUBRECIPIENT shall furnish a Certificate of Insurance to COUNTY. No agreement shall be in effect until the required certificates have been received, approved, and accepted by COUNTY. A renewal certificate will be sent to COUNTY 10 days prior to coverage expiration.
  - 10) **Primary Coverage Clarification.** SUBRECIPIENT coverage will be primary in the event of a loss and will not seek contribution from any insurance or self-insurance maintained by, or provided to, the additional insureds listed above.
  - (11) **Cross-Liability Clause.** A cross-liability clause or separation of insured's condition will be included in all general liability, professional liability, and errors and omissions policies required by the agreement.
- 12) **Waiver of Subrogation.** SUBRECIPIENT agrees to waive their rights of subrogation arising from the work performed under this Agreement.
- c) **Assignment.** SUBRECIPIENT shall not enter into any subcontracts or subawards for any of the Program activities required by the Agreement without prior written approval. This Agreement may not be assigned in whole or in part with the express written approval of COUNTY.
  - d) **Independent Status.** SUBRECIPIENT is independent of COUNTY and will be responsible for any federal, state, or local taxes and fees applicable to payments hereunder. SUBRECIPIENT is not an agent of COUNTY and undertakes this work independent from the control and direction of COUNTY excepting as set forth herein. SUBRECIPIENT shall not seek or have the power to bind COUNTY in any transaction or activity.
  - e) **Notices.** Any notice provided for under this Agreement shall be effective if in writing and (1) delivered personally to the addressee or deposited in the United States mail, postage paid, certified mail, return receipt requested, (2) sent by overnight or commercial air courier (such as Federal Express), (3) sent by facsimile transmission, with the original to follow by regular mail; or, (4) sent by electronic mail with confirming record of delivery confirmation through electronic mail return-receipt, or by confirmation that the electronic mail was accessed, downloaded, or printed. Notice will be deemed to have been adequately given three days following the date of mailing, or immediately if personally served. For service by facsimile or by electronic mail, service will be deemed effective at the beginning of the next working day.
  - f) **Governing Law.** This Agreement is made in the State of Oregon, and shall be governed by and construed in accordance with the laws of that state. Any litigation between COUNTY and SUBRECIPIENT arising under this Agreement or out of work performed under this Agreement shall occur, if in the state courts, in the Clackamas County court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the State of Oregon.
  - g) **Severability.** If any provision of this Agreement is found to be illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the provision shall be stricken.
  - h) **Counterparts.** This Agreement may be executed in any number of counterparts, all of which together will constitute one and the same agreement. Facsimile copy or electronic signatures shall be valid as original signatures.

- i) **Third Party Beneficiaries.** Except as expressly provided in this Agreement, there are no third party beneficiaries to this Agreement. The terms and conditions of this Agreement may only be enforced by the parties.
- j) **Binding Effect.** This Agreement shall be binding on all parties hereto, their heirs, administrators, executors, successors and assigns.
- k) **Integration.** This agreement contains the entire agreement between COUNTY and SUBRECIPIENT and supersedes all prior written or oral discussions or agreements.

(Signature Page Attached)

**SUBRECIPIENT**

Clackamas County Children's Commission  
16518 SE River Road  
Milwaukie, OR 97267

**CLACKAMAS COUNTY**

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

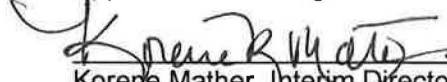
By:   
\_\_\_\_\_  
Darcee Kilsdonk, Executive Director

**Signing on behalf of the Board:**  
By: \_\_\_\_\_  
Rodney Cook, Deputy Director  
Health, Housing & Human Services

Dated: February 12, 2020

Dated: \_\_\_\_\_

Approved as to budget and work plan:

 2/13/2020  
Korene Mather, Interim Director  
Children, Family & Community  
Connections

Dated: \_\_\_\_\_

- Exhibit A-1: Subrecipient Scope of Work
- Exhibit A-2: Performance Reporting Schedule
- Exhibit B: Program Budget
- Exhibit C: Lobbying Certificate
- Exhibit D: Financial Reporting and Reimbursement Request
- Exhibit E: Federal Terms and Conditions
- Exhibit F: Final Financial Report

## EXHIBIT A-1 SUBRECIPIENT SCOPE OF WORK

### **BACKGROUND AND GOALS**

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

HFO’s aims to:

- Prevent the incidence of child abuse and neglect;
- Increase school readiness;
- Improve health outcomes for children and families;
- Build trusting, nurturing relationships with parents;
- Teach parents to identify strengths and utilize problem-solving skills; and
- Improve families’ support systems through linkages and appropriate referrals to community services.

HFO services begin early, during pregnancy or shortly after the birth of a baby, and can last up to 3 years. Parents are voluntarily assessed by HFO Eligibility Screeners to determine eligibility for the program. Parents having factors that place their children at risk of abuse and neglect, and who live in Grantee’s Service Delivery Area are invited to participate in the program. The families who volunteer to participate are connected with a trained, SUBRECIPIENT-provided Home Visitor. Eligible families who do not volunteer cannot be offered services due to full caseloads, and families who are not eligible will be offered referrals to community resources as needed. Families who participate receive weekly Home Visits that decrease in frequency as families increase protective factors and make progress toward providing a safe, healthy, and stable environment for their children.

Strong community partnerships are necessary to provide families with additional services such as child care, mental health counseling, substance abuse treatment, domestic violence intervention and access to basic needs such as food, housing and clothing.

### **DEFINITION OF TERMS**

**HFO Eligibility Screeners:** Grantee staff who administer the New Baby Questionnaire (“NBQ”) with pregnant mothers and parents soon after the birth of their baby.

**Healthy Families America (“HFA”):** The signature program of Prevent Child Abuse America, theoretically rooted in the belief that early, nurturing relationships are the foundation for life-long, healthy development. Interactions between direct service providers and families are relationship-based, designed to promote positive parent-child relationships and healthy attachment that is strength-based, family centered, culturally sensitive and reflective. HFA is the home visiting model by which all HFO sites are accredited.

**Healthy Families Oregon (“HFO”):** An accredited multi-site state system with HFA and Oregon’s largest child abuse prevention program that empowers parents to be their child’s best teacher from the very start.

**Home Visit:** A face-to-face interaction that occurs between the family and the Home Visitor. The goal of the Home Visit is to promote positive parent-child interaction, healthy childhood growth and development, and enhance family functioning.

**Home Visitors:** SUBRECIPIENT staff who provide parent education and support to parents, in the parents' homes. HFA calls these direct service staff, “Family Support Specialists.”

**Service Delivery Area:** The defined geographic area described in SUBRECIPIENT’s Grant application in which SUBRECIPIENT offered to provide HFO services.

February 27, 2020

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of Revenue Grant Agreement from Clackamas Women's Services  
to assist in developing the Clackamas County Safe Visitation and Exchange Program

<b>Purpose/Outcome</b>	Clackamas County will work with local partners to develop the Clackamas County Safe Visitation and Exchange Program's guidelines and practices, connecting program participants with civil legal services and engage in community outreach. This grant funds a .50 fte Safe Visitation and Exchange Program Coordinator, who will oversee program operations, coordinate and provide direct supervision services to clients, act as a liaison with community partners, and provide on-sight lead supervision to parenting time facilitators.
<b>Dollar Amount and Fiscal Impact</b>	\$116,809 No County General Funds are involved and no match is required.
<b>Funding Source</b>	Clackamas Women's Services through their US Dept of Justice, Office on Violence Against Women Grant (Catalog of Federal Award no. 16.021)
<b>Duration</b>	Effective date October 1, 2019 and terminates on September 30, 2022
<b>Previous Board Action/Review</b>	
<b>Strategic Plan Alignment</b>	1. Individuals and families in need are healthy and safe 2. Ensure safe, healthy and secure communities
<b>Counsel Review</b>	County Counsel has reviewed and approved this document. Date of counsel review and approval: January 21, 2020
<b>Contact Person</b>	Korene Mather 503-650-3339
<b>Contract No.</b>	H3S9619

**BACKGROUND:**

The Children, Family & Community Connections Division of the Health, Housing and Human Services Department requests the approval of a Subrecipient Revenue Grant Agreement from Clackamas Women's Services for the Safe Visitation and Exchange Program. The Justice for Families Safe Visitation and Exchange Program was authorized by the Violence Against Women Reauthorization Act of 2013 to improve the response of the civil and criminal justice system to families with a history of sexual assault, domestic violence, dating violence and stalking, or in cases involving allegations of child sexual abuse.

This Revenue Agreement is effective upon signature by all parties for services starting on October 1, 2019 and terminating on September 30, 2022. This Revenue Agreement has a maximum value of \$116,809 and no county funds are involved.

**RECOMMENDATION:**

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

*Healthy Families. Strong Communities.*

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Richard Swift', is written over the text 'Respectfully submitted,'.

Richard Swift, Director  
Health, Housing & Human Services



<b>CLACKAMAS WOMEN'S SERVICES</b>	
<b>SUBRECIPIENT GRANT AGREEMENT: 2019-FJ-AX-006-01</b>	
Project Name: <i>A Safe Place Family Justice Center's Clackamas County Safe Visitation and Exchange Program and Legal Assistance Empowerment Program</i>	
This Agreement is between <b>Clackamas Women's Services</b> , and <b>Clackamas County</b> , acting by and through its Department of Health, Housing & Human Services (SUBRECIPIENT).	
<b>Clackamas Women's Services Data</b>	
Grant Accountant: <b>Melissa Erlbaum</b>	Program Manager: <b>Erin Henkelman</b>
Clackamas Women's Services 256 Warner Milne Road Oregon City, OR 97045 503-557-5810 melissae@cwsor.org	Clackamas Women's Services 256 Warner Milne Road Oregon City, OR 97045 503-655-8600 erinh@cwsor.org
<b>Subrecipient Data</b>	
Finance/Fiscal Representative: <b>Stephanie Radford</b>	Program Representative: <b>Sarah Van Dyke</b>
Stephanie Radford 150 Beaver Creek Rd Oregon City, Oregon 97045 503-650-5695 sradford@clackamas.us	Sarah Van Dyke 256 Warner Milne Road Oregon City, Oregon 97045 503-557-5829 svandyke@clackamas.us
DUNS: 09-699-2656	

### RECITALS

1. Clackamas Women's Services ("CWS") assists individuals and families affected by domestic violence and/or sexual assault. Their approach to serving the community is based on the principle that all human beings have the right to live in a safe and healthy environment, free of threats, sexual harassment and all types of abuse in their lives. Clackamas Women's Services believes that violence is a result of attitudes, power and control, and that violence results when people unjustly exercise power over others. Therefore, all oppressive behaviors must be simultaneously addressed. To that end, Clackamas Women's Services works to ensure that individuals and families have equal access to community resources and they provide support, advocacy and opportunity for self-empowerment, assisting survivors to exercise free and informed life choices free of violence and oppression.
2. Clackamas County Children, Family & Community Connections, a Division of the Department of Health, Housing & Human Services (SUBRECIPIENT) has led system level support and coordination of domestic violence services and response for over 10 years and has housed the Domestic Violence Systems Coordinator position since 2010. CFCC is ideally suited to establish a half-time position to coordinate supervised visitation and safe exchange.

3. CWS has been awarded funding through the U.S. Department of Justice Office on Violence Against Women Justice for Families Grant Program 201-FJ-AX-006 supported under 34 U.S.C. 12464, CFDA 16.021.
4. Funds provided by CWS to Clackamas County Health, Housing and Human Services (SUBRECIPIENT) shall be used for eligible project related expenditures in accordance with the Office on Violence Against Women approved grant budget and project description (Exhibit A).
5. This Grant Agreement of Federal financial assistance sets forth the terms and conditions pursuant to which SUBRECIPIENT agrees on delivery of the Program.

According to the terms of this Subrecipient Grant Agreement (this "Agreement") CWS and SUBRECIPIENT agree as follows:

#### **AGREEMENT**

1. **Term and Effective Date.** Pursuant to the terms of the grant award, this Agreement shall be effective as of the **October 1, 2019** and shall expire on **September 30, 2022**, unless sooner terminated or extended pursuant to the terms hereof.
2. **Program.** The Program is described in Attached Exhibit A: Subrecipient Statement of Program Objectives. SUBRECIPIENT agrees to carry out the program in accordance with the terms and conditions of this Agreement.
3. **Standards of Performance.** SUBRECIPIENT shall perform all activities and programs in accordance with the requirements set forth in this Agreement and all applicable laws and regulations. Furthermore, SUBRECIPIENT shall comply with the requirements of the U.S. Department of Justice Office on Violence Against Women grant **2019-FJ-AX-006** (Federal award date: 8/122/2019) that is the source of the grant funding, in addition to compliance with requirements of Title 2 of the *Code of Federal Regulations* (CFR), Part 200 and with the current edition of the DOJ Grants Financial Guide, which is incorporated herein by reference. A copy of that grant award has been provided to SUBRECIPIENT by CLACKAMAS WOMEN'S SERVICES, which is attached to and made a part of this Agreement by this reference.
4. **Grant Funds.** The funding for this Agreement is the U.S. Department of Justice Office on Violence Against Women Justice for Families Grant Program supported under 34 U.S.C. 12464, CFDA 16.021 issued to CLACKAMAS WOMEN'S SERVICES. The maximum, not to exceed, grant amount that CLACKAMAS WOMEN'S SERVICES will pay is **\$116,809**. This is a cost reimbursement grant and disbursements will be made in accordance with the schedule and requirements contained in **Exhibit D: Required Financial Reporting and Reimbursement Request** and **Exhibit E: Monthly/Quarterly/Final Performance Report**.
5. **Amendments.** The terms of this Agreement shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by both parties. SUBRECIPIENT must submit a written request including a justification for any amendment to CLACKAMAS WOMEN'S SERVICES in writing at least forty-five (45) calendar days before this Agreement expires. No payment will be made for any services performed before the beginning date or after the expiration date of this Agreement. If the maximum compensation amount is increased by amendment, the amendment must be fully executed before SUBRECIPIENT performs work subject to the amendment.

6. **Termination.** This Agreement may be terminated by the mutual consent of both parties or by a party upon written notice from one to the other upon thirty (30) business days' notice. This notice may be transmitted in person, by certified mail, facsimile, or by email.
7. **Funds Available and Authorized.** CLACKAMAS WOMEN'S SERVICES certifies that it has received an award sufficient to fund this Agreement.
8. **Future Support.** CLACKAMAS WOMEN'S SERVICES makes no commitment of future support and assumes no obligation for future support for the activity contracted herein except as set forth in Section 7.
9. **Administrative Requirements.** SUBRECIPIENT agrees to its status as a subrecipient, and accepts among its duties and responsibilities the following:
  - a) **Financial Management.** SUBRECIPIENT shall comply with 2 CFR Part 200, Subpart D—*Post Federal Award Requirements*, and agrees to adhere to the accounting principles and procedures required therein, use adequate internal controls, and maintain necessary sources documentation for all costs incurred.
  - b) **Revenue Accounting.** Grant revenue and expenses generated under this Agreement should be recorded in compliance with generally accepted accounting principles and/or governmental accounting standards. This requires that the revenues are treated as unearned income or "deferred" until the compliance requirements and objectives of the grant have been met. Revenue may be recognized throughout the life cycle of the grant as the funds are "earned". All grant revenues not fully earned and expended in compliance with the requirements and objectives at the end of the period of performance must be returned to CLACKAMAS WOMEN'S SERVICES within 15 days.
  - c) **Personnel.** If SUBRECIPIENT becomes aware of any likely or actual changes to key systems, or grant-funded program personnel or administration staffing changes, SUBRECIPIENT shall notify CLACKAMAS WOMEN'S SERVICES in writing within 30 days of becoming aware of the likely or actual changes and a statement of whether or not the SUBRECIPIENT will be able to maintain compliance at all times with all requirements of this Agreement.
  - d) **Cost Principles.** SUBRECIPIENT shall administer the award in conformity with 2 CFR 200, Subpart E. These cost principles must be applied for all costs incurred whether charged on a direct or indirect basis. Costs disallowed by the Federal government shall be the liability of the SUBRECIPIENT.
  - e) **Period of Availability.** SUBRECIPIENT may charge to the award only allowable costs resulting from obligations incurred during the funding period.
  - f) **Match.** Matching funds are not required for this Agreement.
  - g) **Budget.** SUBRECIPIENT use of funds may not exceed the amounts specified in the **Exhibit B: Subrecipient Program Budget**. SUBRECIPIENT may not transfer grant funds between budget lines without the prior written approval of CLACKAMAS WOMEN'S SERVICES. At no time may budget modification change the scope of the original grant application or Agreement.
  - h) **Indirect Cost Recovery.** SUBRECIPIENT elects no indirect cost recovery on this award.

- i) **Research and Development.** SUBRECIPIENT certifies that this award is not for research and development purposes.
- j) **Payment.** The SUBRECIPIENT must submit a final request for payment no later than fifteen (15) days after the end date of this Agreement. Routine requests for reimbursement should be submitted as specified in **Exhibit D: Required Financial Reporting and Reimbursement Request**.
- k) **Performance Reporting.** The SUBRECIPIENT must submit Performance Reports as specified in **Exhibit E** for each period (monthly, quarterly, and final) during the term of this Agreement.
- l) **Financial Reporting.** Methods and procedures for payment shall minimize the time elapsing between the transfer of funds and disbursement by the grantee or SUBRECIPIENT, in accordance with Treasurer Regulations at 31 CFR Part 205. Therefore, upon execution of this Agreement, SUBRECIPIENT will submit completed **Exhibit D: Required Financial Reporting and Reimbursement Request** on a monthly basis.
- m) **Closeout.** CLACKAMAS WOMEN'S SERVICES will closeout this award when CLACKAMAS WOMEN'S SERVICES determines that all applicable administrative actions and all required work have been completed by SUBRECIPIENT, pursuant to 2 CFR 200.343—*Closeout*. SUBRECIPIENT must liquidate all obligations incurred under this award and must submit all financial (**Exhibits D & F**), performance (**Exhibit E**), and other reports as required by the terms and conditions of the Federal award and/or CLACKAMAS WOMEN'S SERVICES, no later than 90 calendar days after the end date of this agreement. At closeout, SUBRECIPIENT must account for all equipment with remaining value over \$5,000 and residual supplies valued over \$5,000 in the aggregate that were purchased with Federal funds authorized by this Agreement. Compensation to the Federal Agency may be required for equipment or residual supplies valued over \$5,000 per 2 CFR 200.313 & 314.
- n) **Universal Identifier and Contract Status.** The SUBRECIPIENT shall comply with 2 CFR 25.200-205 and apply for a unique universal identification number using the Data Universal Numbering System (DUNS) as required for receipt of funding. In addition, the SUBRECIPIENT shall register and maintain an active registration in the Central Contractor Registration database, now located at <http://www.sam.gov>.
- o) **Suspension and Debarment.** The SUBRECIPIENT shall comply with 2 CFR 180.220 and 901. This common rule restricts subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities. SUBRECIPIENT is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. SUBRECIPIENT may access the Excluded Parties List System at <http://www.sam.gov>. The Excluded Parties List System contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Orders 12549 and 12689. Awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.
- p) **Lobbying.** SUBRECIPIENT certifies (**Exhibit C: Lobbying**) that no portion of the Federal grant funds will be used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law and shall abide by 2 CFR 200.450 and the Byrd Anti-Lobbying Amendment 31 U. S. C. 1352. In addition, the SUBRECIPIENT certifies that it is a nonprofit organization described in Section 501(c) (4) of the Code, but does not and will not engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act.

- q) **Audit.** The SUBRECIPIENT shall comply with the audit requirements prescribed in the Single Audit Act Amendments and the new Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, located in 2 CFR 200.501. SUBRECIPIENT expenditures of \$750,000 or more in Federal funds require an annual Single Audit. SUBRECIPIENT is required to hire an independent auditor qualified to perform a Single Audit. Subrecipients of Federal awards are required under the Uniform Guidance to submit their audits to the Federal Audit Clearinghouse (FAC) within 9 months from the SUBRECIPIENT'S fiscal year end or 30 days after issuance of the reports, whichever is sooner. The website for submissions to the FAC is <https://harvester.census.gov/facweb/>. At the time of submission to the FAC, the SUBRECIPIENT will also submit a copy of the audit to CLACKAMAS WOMEN'S SERVICES. If requested and if SUBRECIPIENT does not meet the threshold for the Single Audit requirement, SUBRECIPIENT shall submit to CLACKAMAS WOMEN'S SERVICES a financial audit or independent review of financial statements within 9 months from the SUBRECIPIENT'S fiscal year end or 30 days after issuance of the reports, whichever is sooner.
- r) **Monitoring.** The SUBRECIPIENT agrees to allow CLACKAMAS WOMEN'S SERVICES access to conduct site visits and inspections of financial records for the purpose of monitoring in accordance with 2 CFR 200.331. CLACKAMAS WOMEN'S SERVICES, the Federal government, and their duly authorized representatives shall have access to such financial records and other books, documents, papers, plans, records of shipments and payments and writings of SUBRECIPIENT that are pertinent to this Agreement, whether in paper, electronic or other form, to perform examinations and audits and make excerpts and transcripts. Monitoring may be performed onsite or offsite, at CLACKAMAS WOMEN'S SERVICES' discretion. Depending on the outcomes of the financial monitoring processes, this Agreement shall either a) continue pursuant to the original terms, b) continue pursuant to the original terms and any additional conditions or remediation deemed appropriate by CLACKAMAS WOMEN'S SERVICES, or c) be de-obligated and terminated.
- s) **Record Retention.** The SUBRECIPIENT will retain and keep accessible all such financial records, books, documents, papers, plans, records of shipments and payments and writings for a minimum of six (6) years, or such longer period as may be required by the Federal agency or applicable state law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later, according to 2 CFR 200.333-337.
- t) **Fiduciary Duty.** SUBRECIPIENT acknowledges that it has read the award conditions and certifications for the U.S. Department of Justice Office on Violence Against Women Justice for Families Grant Program 201-FJ-AX-006 supported under 34 U.S.C. 12464, CFDA 16.021, that it understands and accepts those conditions and certifications, and that it agrees to comply with all the obligations, and be bound by any limitations applicable to CLACKAMAS WOMEN'S SERVICES, as grantee, under those grant documents.
- u) **Failure to Comply.** SUBRECIPIENT acknowledges and agrees that this Agreement and the terms and conditions therein are essential terms in allowing the relationship between CLACKAMAS WOMEN'S SERVICES and SUBRECIPIENT to continue, and that failure to comply with such terms and conditions represents a material breach of the original grant and this Agreement. Such material breach shall give rise to CLACKAMAS WOMEN'S SERVICES' right, but not obligation, to withhold SUBRECIPIENT grant funds until compliance is met or to terminate this relationship including the original Agreement and all associated amendments.
- v) **Specific Conditions.** SUBRECIPIENT shall submit general ledger backup, with detail, with each claim for reimbursement for the duration of this award.

## 10. Compliance with Applicable Laws

- a) **Public Policy.** The SUBRECIPIENT expressly agrees to comply with all public policy requirements, laws, regulations, and executive orders issued by the Federal government, to the extent they are applicable to the Agreement: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, "Equal Employment Opportunity" as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) all regulations and administrative rules established pursuant to the foregoing laws; and (ix) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations; and 2 CFR Part 200 as applicable to SUBRECIPIENT. Additional requirements are as specified in the Special Conditions section of award 2019-FJ-AX-006, which are attached in Attachment A.
- b) **Rights to Inventions Made Under a Contract or Agreement.** SUBRECIPIENT agrees that contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any further implementing regulations issued by the Department of Justice.
- c) **Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.).** SUBRECIPIENT agrees that if this Agreement is in excess of \$150,000, the recipient agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, 42 U.S.C. 7401 et seq., and the Federal Water Pollution Control Act, as amended 33 U.S.C. 1251 et seq. Violations shall be reported to the awarding Federal Department and the appropriate Regional Office of the Environmental Protection Agency.
- d) **State Statutes.** SUBRECIPIENT expressly agrees to comply with all statutory requirements, laws, rules, and regulations issued by the State of Oregon, to the extent they are applicable to the Agreement.
- e) **Conflict Resolution.** If potential, actual or perceived conflicts are discovered among federal, state and local statutes, regulations, administrative rules, executive orders, ordinances or other laws applicable to the Services under the Agreement, SUBRECIPIENT may in writing request CLACKAMAS WOMEN'S SERVICES to resolve the conflict. SUBRECIPIENT shall specify if the conflict(s) create a problem for the design or other Services required under the Agreement. CLACKAMAS WOMEN'S SERVICES shall undertake reasonable efforts to resolve the issue but is not required to deliver any specific answer or product. The SUBRECIPIENT shall remain obligated to independently comply with all applicable laws and no action by CLACKAMAS WOMEN'S SERVICES shall be deemed a guarantee, waiver, or indemnity for non-compliance with any law.
- f) **Disclosure of Information.** Any confidential or personally identifiable information (2 CFR 200.82) acquired by the SUBRECIPIENT during the execution of the project should not be disclosed during or upon termination or expiration of this Agreement for any reason or purpose without the prior written consent of CLACKAMAS WOMEN'S SERVICES. SUBRECIPIENT further agrees to take reasonable measures to safeguard such information (2 CFR 200.303) and to follow all applicable federal, state and local regulations regarding privacy and obligations of confidentiality.
- g) **Mileage reimbursement.** If mileage reimbursement is authorized in SUBRECIPIENT budget or by the written approval of CLACKAMAS WOMEN'S SERVICES, mileage must be paid at the rate

established by SUBRECIPIENT'S written policies covering all organizational mileage reimbursement or at the IRS mileage rate at the time of travel, whichever is lowest.

- h) **Human Trafficking.** In accordance with 2 CFR Part 175, SUBRECIPIENT, its employees, contractors and subrecipients under this Agreement and their respective employees may not:
- 1) Engage in severe forms of trafficking in persons during the period of the time the award is in effect;
  - 2) Procure a commercial sex act during the period of time the award is in effect; or
  - 3) Used forced labor in the performance of the Agreement or subaward under this Agreement, as such terms are defined in such regulation.
- i) SUBRECIPIENT must inform CLACKAMAS WOMEN'S SERVICES immediately of any information SUBRECIPIENT receives from any source alleging a violation of any of the above prohibitions in the terms of this Agreement. CLACKAMAS WOMEN'S SERVICES may terminate this Agreement, without penalty, for violation of these provisions. CLACKAMAS WOMEN'S SERVICES' right to terminate this Agreement unilaterally, without penalty, is in addition to all other remedies under this Agreement. SUBRECIPIENT must include these requirements in any subaward made to public or private entities under this Agreement

## 11. Federal and State Procurement Standards

- a) All procurement transactions, whether negotiated or competitively bid and without regard to dollar value, shall be conducted in a manner so as to provide maximum open and free competition. All sole-source procurements must receive prior written approval from CLACKAMAS WOMEN'S SERVICES in addition to any other approvals required by law applicable to the SUBRECIPIENT. Justification for sole-source procurement should include a description of the project and what is being contracted for, an explanation of why it is necessary to contract noncompetitively, time constraints and any other pertinent information. Interagency agreements between units of government are excluded from this provision.
- b) SUBRECIPIENT must maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award and administration of contracts. If SUBRECIPIENT has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, SUBRECIPIENT must also maintain written standards of conduct covering organizational conflicts of interest. SUBRECIPIENT shall be alert to organizational conflicts of interest or non-competitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. Contractors that develop or draft specifications, requirements, statements of work, and/or Requests for Proposals (RFP) for a proposed procurement must be excluded by SUBRECIPIENT from bidding or submitting a proposal to compete for the award of such procurement. Any request for exemption must be submitted in writing to CLACKAMAS WOMEN'S SERVICES.
- c) The SUBRECIPIENT agrees that, to the extent they use contractors or subcontractors, such recipients shall use small, minority, women-owned or disadvantaged business concerns and contractors or subcontractors to the extent practicable.

## 12. General Agreement Provisions.

- a) **Non-appropriation Clause.** If payment for activities and programs under this Agreement extends into CLACKAMAS WOMEN'S SERVICES' next fiscal year, CLACKAMAS WOMEN'S SERVICES' obligation to pay for such work is subject to approval of future appropriations to fund the Agreement by the Board of CLACKAMAS WOMEN'S SERVICES.
- b) **Indemnification.** SUBRECIPIENT agrees to indemnify and hold CLACKAMAS WOMEN'S SERVICES and its officers, employees, and agents harmless with respect to any claim, cause, damage, action, penalty or other costs arising from or related to SUBRECIPIENT's negligent or willful acts or those of its employees, agents or those under SUBRECIPIENT's control. SUBRECIPIENT is responsible for the actions of its own agents and employees, and CLACKAMAS WOMEN'S SERVICES assumes no liability or responsibility with respect to SUBRECIPIENT's actions, employees, agents or otherwise with respect to those under its control.

To the extent permitted by applicable law, SUBRECIPIENT shall defend (in the case of CLACKAMAS WOMEN'S SERVICES), save and hold harmless the CLACKAMAS WOMEN'S SERVICES, and their officers, employees, and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of or relating to the operations of SUBRECIPIENT, including but not limited to the activities of SUBRECIPIENT or its officers, employees, subcontractors or agents under this AGREEMENT.

- c) CWS agrees to indemnify and hold SUBRECIPIENT and its elected officials, officers, employees, and agents harmless with respect to any claim, cause, damage, action, penalty or other cost ( ) arising from or related to CWS or its agents' negligent or willful acts or those of its employees, agents or those under CWS 's control. CWS is responsible for the actions of its own agents and employees, and SUBRECIPIENT assumes no liability or responsibility with respect to SUBRECIPIENT's actions, employees, agents or otherwise with respect to those under its control.

SUBRECIPIENT(S) that are not units of local government as defined in ORS 190.003, shall indemnify, defend, save and hold harmless CLACKAMAS WOMEN'S SERVICES 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 SUBRECIPIENT or any of the officers, agents, employees or subcontractors of SUBRECIPIENT ("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 SUBRECIPIENT from and against any and all Claims.

- d) **Insurance.** CLACKAMAS WOMEN'S SERVICES shall enforce SUBRECIPIENT compliance with the insurance requirements outlined herein, and shall take all reasonable steps to enforce such compliance. Examples of reasonable steps include issuing stop work orders until the insurance is in full force, terminating this Agreement, as permitted herein, or pursuing legal action to enforce such requirements. During the term of this Agreement, SUBRECIPIENT shall maintain in force, at its own expense, each insurance required in **Exhibit G: Insurance**.
- e) **Assignment.** This Agreement may not be assigned in whole or in part without the prior express written approval of CLACKAMAS WOMEN'S SERVICES.



- f) **Independent Status.** SUBRECIPIENT is independent of CLACKAMAS WOMEN'S SERVICES and will be responsible for any federal, state, or local taxes and fees applicable to payments hereunder. SUBRECIPIENT is not an agent of CLACKAMAS WOMEN'S SERVICES and undertakes this work independent from the control and direction of the CLACKAMAS WOMEN'S SERVICES excepting as set forth herein. SUBRECIPIENT shall not seek or have the power to bind CLACKAMAS WOMEN'S SERVICES in any transaction or activity.
- g) **Notices.** Any notice provided for under this Agreement shall be effective if in writing and (1) delivered personally to the addressee or deposited in the United States mail, postage paid, certified mail, return receipt requested, (2) sent by overnight or commercial air courier (such as Federal Express), (3) sent by facsimile transmission, with the original to follow by regular mail; or, (4) sent by electronic mail with confirming record of delivery confirmation through electronic mail return-receipt, or by confirmation that the electronic mail was accessed, downloaded, or printed. Notice will be deemed to have been adequately given three days following the date of mailing, or immediately if personally served. For service by facsimile or by electronic mail, service will be deemed effective at the beginning of the next working day.
- h) **Governing Law.** This Agreement is made in the State of Oregon, and shall be governed by and construed in accordance with the laws of that state without giving effect to the conflict of law provisions thereof. Any litigation between CLACKAMAS WOMEN'S SERVICES and SUBRECIPIENT arising under this Agreement or out of work performed under this Agreement shall occur, if in the state courts, in the Clackamas County court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the State of Oregon.
- i) **Severability.** If any provision of this Agreement is found to be illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the provision shall be stricken.
- j) **Counterparts.** This Agreement may be executed in any number of counterparts, all of which together will constitute one and the same Agreement. Facsimile copy or electronic signatures shall be valid as original signatures.
- k) **Third Party Beneficiaries.** Except as expressly provided in this Agreement, there are no third party beneficiaries to this Agreement. The terms and conditions of this Agreement may only be enforced by the parties.
- l) **Binding Effect.** This Agreement shall be binding on all parties hereto, their heirs, administrators, executors, successors and assigns.
- m) **Integration.** This Agreement contains the entire Agreement between CLACKAMAS WOMEN'S SERVICES and SUBRECIPIENT and supersedes all prior written or oral discussions or Agreements.

*(Signature Page Follows)*

SIGNATURE PAGE TO SUBRECIPIENT GRANT AGREEMENT

AGREED to by the Parties.

CLACKAMAS WOMEN'S SERVICES,  
OREGON

CLACKAMAS COUNTY

By: \_\_\_\_\_  
Melissa Erlbaum, Executive Director,  
Clackamas Women's Services

By: \_\_\_\_\_  
Richard Swift, Director  
Health, Housing & Human Service Department

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

- Exhibit A: SUBRECIPIENT Statement of Program Objectives
- Exhibit B: SUBRECIPIENT Program Budget
- Exhibit C: Lobbying Certificate
- Exhibit D: Required Financial Reporting and Reimbursement Request
- Exhibit E: Monthly/Quarterly/Final Performance Report
- Exhibit F: Final Financial Report
- Exhibit G: Insurance
- Attachment A: Award 2019-FJ-AX-006

February 27, 2020

Board of County Commissioners  
Clackamas County

Members of the Board:

**Approval for Agreement #9557 to a Revenue Agreement  
with Northwest Permanente, P.C. (Kaiser Permanente),  
for Provider Services to members enrolled with Health Benefits Plan**

<b>Purpose/Outcomes</b>	Provides Clackamas Health Centers (CHC) reimbursement for Provider Services serving Kaiser Permanente Member Health Benefits Plan members treated at CHC clinics.
<b>Dollar Amount and Fiscal Impact</b>	CHC is eligible to receive payment for services furnished to persons enrolled in Kaiser Permanente Health Benefits Plans. This is a no maximum agreement. No County General Funds are involved. No matching funds required.
<b>Funding Source</b>	Kaiser Permanente Medical Care Program in the Northwest Region (KP)
<b>Duration</b>	Effective October 1, 2019 and no expiration.
<b>Previous Board Action</b>	The Board last reviewed and approved this contract on October 19, 2017, agenda item A4.
<b>Strategic Plan Alignment</b>	1. Individuals and families in need are healthy and safe 2. Ensure Safe, healthy and secure communities
<b>Counsel Review</b>	County Counsel has reviewed and approved this document. It was approved on November 25, 2019.
<b>Contact Person</b>	Deborah Cockrell 503-742-5495
<b>Contract No.</b>	9557

**BACKGROUND:**

Clackamas Health Centers (CHC) of the Health, Housing and Human Services Department requests the approval of Agreement #9557 to a Revenue agreement with Kaiser Permanente Medical Care Program in the Northwest Region (KP) for the purpose of providing Provider Services.

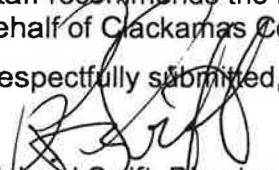
KP and CHC desire to enter into this Professional Services Agreement under which CHC will provide medical services. A 'Participating Provider' means health care professionals who provide behavioral health care wherein KP reimburses for services.

This is a revenue contract for CHC. The total amount of the agreement is unknown because the number of authorized patients cannot be projected with certainty. No County General Funds are involved. The Agreement is effective October 1, 2019 and will continue until terminated. This is a retro-active request due to receiving it from KP after the effective date and ongoing negotiations in language.

**RECOMMENDATION:**

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

Respectfully submitted,

  
Richard Swift, Director  
Health, Housing, and Human Services

**HEALTH CARE SERVICES AGREEMENT**

**BETWEEN**

**NORTHWEST PERMANENTE, P.C.**

**AND**

**CLACKAMAS COUNTY COMMUNITY HEALTH DIVISION**

**ARTICLE 1 DEFINITIONS**

- 1.1 Clean Claim
- 1.2 Covered Services
- 1.3 Kaiser Payer
- 1.4 Member
- 1.5 Member Cost Share
- 1.6 Other Payer
- 1.7 Payer
- 1.8 Plan
- 1.9 Policies
- 1.10 Proprietary Information
- 1.11 Services

**ARTICLE 2 PROVIDER'S RESPONSIBILITIES**

- 2.1 Provision of Services
- 2.2 Non-Discrimination
- 2.3 Licensure and Credentials
- 2.4 Subcontracts
- 2.5 Information
- 2.6 Policies
- 2.7 Law

**ARTICLE 3 NETWORK'S RESPONSIBILITIES**

**ARTICLE 4 BILLING AND PAYMENT**

- 4.1 Compensation
- 4.2 Claims
- 4.3 Prompt Payment
- 4.4 Member Billing
- 4.5 Member Hold Harmless
- 4.6 Coordination of Benefits
- 4.7 Liens and Third Party Claims
- 4.8 Audit, Recoupment, and Offset

**ARTICLE 5 TERM AND TERMINATION**

- 5.1 Term
- 5.2 Termination Without Cause
- 5.3 Termination With Cause
- 5.4 Immediate Termination
- 5.5 Effect of Termination
- 5.6 Suspension of Participation

**ARTICLE 6 DISPUTE RESOLUTION**

- 6.1 Member Grievance
- 6.2 Provider Appeals Process
- 6.3 Disputes Between the Parties

**ARTICLE 7 RECORDS AND CONFIDENTIALITY**

- 7.1 Maintenance of Records
- 7.2 Access to Records

**ARTICLE 8 RELATIONSHIP OF PARTIES**

- 8.1 Communication with Members
- 8.2 Independent Contractor
- 8.3 Government Contractor
- 8.4 Proprietary Information
- 8.5 Insurance
- 8.6 Mutual Indemnification

**ARTICLE 9 MISCELLANEOUS**

- 9.1 Notice
- 9.2 Assignment and Delegation
- 9.3 No Third Party Beneficiaries
- 9.4 Force Majeure
- 9.5 Use of Name
- 9.6 Governing Law
- 9.7 Severability
- 9.8 Waiver
- 9.9 Amendment
- 9.10 Interpretation
- 9.11 Counterparts
- 9.12 No Exclusivity
- 9.13 No Guarantee
- 9.14 Remedies Cumulative
- 9.15 Entire Agreement

#9557

## HEALTH CARE SERVICES AGREEMENT

This Health Care Services Agreement (“**Agreement**”) is entered into between Northwest Permanente, P.C. (“**Network**”) and Clackamas County Community Health Division (“**Provider**”). This Agreement is effective for Services rendered on and after October 1, 2019 (“**Effective Date**”).

WHEREAS, Kaiser Foundation Hospitals has been retained by Kaiser Foundation Health Plan of the Northwest (“**KFHP-NW**”) to provide or arrange for institutional health care services to Members (as defined below); and

WHEREAS, Northwest Permanente, P.C. has been retained by KFHP-NW to provide or arrange for professional services to Members, and together, Kaiser Foundation Hospitals, Northwest Permanente, P.C. and KFHP-NW cooperate to form the Kaiser Permanente Medical Care Program in the Northwest Region (“**KP**”); and

WHEREAS, KFHP-NW shall be the corporation responsible for the obligations of a licensed health care services contractor with respect to Members with individual or group coverage issued by KFHP-NW and regulated by the applicable state insurance commissioner; and

WHEREAS, Network desires to enter into an arrangement for Provider to render Services to Members;

NOW THEREFORE, the parties agree as follows:

### ARTICLE 1 DEFINITIONS

When used in this Agreement, these capitalized terms shall have the following meanings.

1.1 “**Clean Claim**” means a claim that (1) is completed with all data elements required by Payer, (2) if submitted electronically, is submitted using standard code sets as required by law, and (3) has no defect or error that prevents timely adjudication.

1.2 “**Covered Services**” means the health care services that a Member is entitled to receive under the terms and conditions of a Plan.

1.3 “**Kaiser Payer**” means Kaiser Foundation Hospitals, Northwest Permanente, P.C., KFHP-NW and any company controlling, controlled by, or under common control with KFHP-NW when a Member of such a company under any circumstance (such as, but not limited to, vacations, temporary work assignments, and direct referrals for specialty care), seeks care from Provider under a Plan regulated by a state insurance or managed care commissioner. With respect to applicable state laws regarding health care service contractors, KFHP-NW is responsible for the conduct of such companies and their compliance with the terms of this Agreement.

1.4 “**Member**” means an individual entitled to receive Covered Services.

1.5 “**Member Cost Share**” means a copayment, deductible, or coinsurance amount payable by a Member for Covered Services pursuant to the Member’s Plan.

1.6 “**Other Payer**” means any public or private entity – including, without limitation, employers, insurers, third party administrators, labor unions, trusts, associations, and other

organizations, persons, and entities – that is responsible for funding a Plan and that enters into an administrative or management service arrangement with a Kaiser Payer to administer its Plan.

1.7 “**Payer**” means a Kaiser Payer or Other Payer.

1.8 “**Plan**” means a plan of health benefits administered, issued, sponsored or underwritten by either a Kaiser Payer or an Other Payer, as set forth in the Member’s summary plan description, coverage agreement, evidence of coverage, certificate of coverage, or other written coverage document.

1.9 “**Policies**” means the policies and procedures of Kaiser Payer and Other Payers that relate to this Agreement including, but not limited to: (1) quality improvement/management; (2) utilization management and referral and authorization processes; (3) pre-admission testing guidelines; (4) claims submission, review and payment; (5) member grievances; (6) provider credentialing; and (7) electronic transmission of data. Policies include those policies and procedures set forth in manuals, bulletins, and newsletters, whether made available by postal mail, electronic mail, web site, or other media.

1.10 “**Proprietary Information**” means all information, whether prepared by Provider, Network, Plan, Payer, or their representatives, relating to itself or the development, execution or performance of this Agreement whether furnished or obtained prior to or after the Effective Date. Proprietary Information includes, but is not limited to, pricing, financial information, rate schedules, and Member information collected by Plans and Payers not otherwise set forth in medical records; provided, however, the following shall not constitute Proprietary Information: (1) information known prior to receipt from the other party; (2) information previously available to the public prior to receipt; or (3) Proprietary Information that subsequently becomes available to the public through no fault or omission on the part of the party receiving the Proprietary Information.

1.11 “**Services**” means those services, supplies and other resources described in Exhibit “Compensation and Services” that Provider customarily provides to its general patient population.

## ARTICLE 2 PROVIDER’S RESPONSIBILITIES

2.1 **Provision of Services.** Provider shall make available to and provide Members with Services, along with any related facilities, equipment, personnel or other resources necessary to provide Services, according to generally accepted standards of practice. Services shall be readily available and accessible to Members and provided in a prompt and efficient manner without unreasonable delays.

2.2 **Non-Discrimination.** Provider shall provide Services to Members without discrimination on the basis of race, ethnicity, color, gender, sex, creed, religion, national origin, age, health status, physical or mental disability, genetic information, veteran’s status, marital status, sexual orientation, gender identity, income, source of payment, participation in a government program, evidence of insurability, medical condition, claims experience, receipt of health care, conditions arising out of acts of domestic violence, status as a Member, or any other status protected by applicable law; and Provider shall ensure that Provider’s facilities and equipment are accessible to persons with disabilities. Provider shall make Services available to



all classes of Members, in the same manner, in accordance with the same standards, and with the same availability, as with respect to Provider's other patients.

2.3 **Licensure and Credentials.** Provider represents and warrants that it (together with its employees, agents, and contractors providing Services) shall throughout the term of this Agreement: possess and maintain, without restriction, all applicable federal, state and local licenses, permits, certificates, approvals and authorizations required to render Services to Members (including, if applicable, medical staff membership and clinical privileges at facilities designated by Network); comply with KP credentialing requirements, as described in Policies; remain accredited or certified by the organizations designated by Network; be enrolled in, participate in, meet coverage conditions for and, where applicable under Centers for Medicare and Medicaid Services rules, be certified by the Medicare and Medicaid programs; and not (i) be "opted out" of Medicare, (ii) be sanctioned, debarred, suspended or excluded from any federal program, including Medicare or Medicaid, or (iii) be identified on any federal list of sanctioned or excluded entities and individuals, including lists maintained by the Department of Health and Human Services, General Services Administration, Office of Inspector General and Office of Foreign Assets Control. Provider shall comply with the standards of any organization accrediting KP as they apply to Services rendered to Members.

2.4 **Subcontracts.** If Provider arranges for the provision of Services to a Member by any individual or entity not a bona fide employee of Provider ("**Subcontractor**"), Provider shall enter into a written contract with such Subcontractor prior to the provision of Services to Members by the Subcontractor. Such contract shall require the Subcontractor to comply with the same terms applicable to Provider under this Agreement. Upon request, Provider shall promptly provide access to and copies of all contracts with Subcontractors. Unless otherwise required by law or arranged with Network, Provider shall retain responsibility for paying its Subcontractors (in accordance with any law applicable to subcontractors of health care service contractors), and such Subcontractors shall not seek reimbursement from or have any recourse against a Payer for Subcontractor's services provided to Members.

2.5 **Information.** Provider shall notify Network Promptly (as defined below) upon Provider's knowledge of any of the following involving Provider or any employee, agent or Subcontractor providing Services: (1) the revocation, suspension, restriction, or expiration of any license, permit, certification, approval, authorization, medical staff membership or clinical privilege required to render Services to Members or of any accreditation or certification specified in Section 2.3 (Licensure and Credentials); (2) sanction by or debarment, exclusion, suspension or "opt out" from any federal program, including Medicare or Medicaid, or identification on a federal list of sanctioned or excluded entities and individuals, including lists maintained by the Department of Health and Human Services, General Services Administration, Office of Inspector General and Office of Foreign Assets Control; (3) the submission of a formal report to a professional board, licensing agency, or the National Practitioner Data Bank of adverse credentialing or peer review action; (4) a material change in credentialing or privilege status; (5) any change in operations that will likely materially affect the manner in which Services are provided to Members; (6) any unusual occurrence involving a Member that is reported or required to be reported to a regulatory body or an accreditation organization; (7) any change in legal status, tax identification number, or Medicare or Medicaid number; (8) any material change in ownership, control, name, or location; (9) the initiation of any legal action, accreditation organization action, or, regulatory or governmental action that is likely to materially and

adversely affect Provider's or a Subcontractor's ability to perform its obligations under this Agreement; (10) any professional liability claim or other legal action filed or asserted by a Member against Provider or an employee, agent, or Subcontractor of Provider; (11) any event or circumstance that is likely to materially impair the ability to provide Services to Members, and (12) bankruptcy, dissolution or receivership of Provider, or an assignment by Provider for the benefit of creditors. However, Provider shall not be required to waive legal privilege in order to comply with subsections (3), (6), (9) and (10) of this Section, provided that Provider shall notify Network pursuant to these subsections to the extent Provider can do so without waiving legal privilege. "Promptly" means within 2 business days for subsections (1), (2), (3) and (6) and within 10 business days for the other subsections in this Section.

2.6 **Policies.** Provider shall cooperate and comply with Policies of which Provider knows or reasonably should have known. Policies may be modified by Payers from time to time, but no Policy change shall be retroactive without the express consent of Provider. In the event of any inconsistency between a Policy and this Agreement, this Agreement shall prevail.

A. Provider shall cooperate and comply with Payers' quality assurance and utilization management activities (including pre-service, concurrent and retrospective reviews), case management and disease management services, preauthorization steps required for Covered Services, member and provider grievance and appeals processes, pharmaceutical formularies, claims submission and payment procedures.

2.7 **Law.** Provider shall comply with all laws, rules and regulations applicable to Provider and Services under this Agreement, including those set forth in Exhibits.

### ARTICLE 3 NETWORK'S RESPONSIBILITIES

Network and KFHP-NW shall ensure that Payers (a) provide Members with sufficient information to permit Provider to determine Plan benefits, Member eligibility for Plan benefits, and other necessary Plan information, and (b) appropriately designate Provider in directories.

### ARTICLE 4 BILLING AND PAYMENT

4.1 **Compensation.** Compensation to Provider for Services that are Covered Services to Members shall be paid at the lesser of Provider's billed charges or the rates set forth in Exhibit "Compensation and Services," less any Member Cost Share. Provider accepts such amount as payment in full for all Services that are Covered Services and acknowledges that compliance with Section 2.3 (Licensure and Credentials) is a precondition to payment. Pursuant to the procedures in Section 4.4 (Member Billing), Provider shall also accept from the Member payment at the rates set forth in Exhibit "Compensation and Services" as payment in full for all Services that are not Covered Services.

4.2 **Claims.** Provider shall submit to the applicable Payer a Clean Claim for Covered Services rendered to Members. Provider shall maximize the use of electronic claims rather than paper claims. Provider agrees that Payers shall not be obligated to make payments for billings received more than 365 days from (1) the date of service or (2), when a Payer is the secondary payer, from the date of receipt by Payer of the primary payer's explanation of benefits. This requirement may be waived, in the discretion of the applicable Payer, in the event Provider provides notice and appropriate evidence to the Payer of extraordinary circumstances outside the

control of Provider that resulted in the delayed submission. If Provider does not timely submit a claim, or does not timely dispute any alleged underpayment, Provider's claim for payment shall be deemed waived, and Provider shall not seek payment from the Plan, Payer, Network, or Member.

4.3 **Prompt Payment.** Within 30 days of receipt of a Clean Claim from Provider, Network shall (1) cause Kaiser Payer to pay Provider for Services that are Covered Services rendered to Members of Kaiser Payer and (2) to the extent permitted by law, notify Other Payers to authorize payment to Provider for Services that are Covered Services rendered to an Other Payer's Members; provided, that such period shall be extended as reasonably necessary where benefits must be coordinated with another health plan. Network is not responsible for the promptness or ultimate payment of claims for services rendered to Members of any Plan other than KFHP-NW. Network shall, however, reasonably assist Provider in collecting delinquent or underpayments from Payers.

4.4 **Member Billing.** Provider shall bill Members for applicable Member Cost Share. Provider may bill Members, subject to Section 4.1 (Compensation), for Services that are not Covered Services if prior to the services being rendered, the Member agreed in writing to pay for such services after being advised the services may not be Covered Services. Provider may not bill Members for Services that are Covered Services where payment is denied based upon utilization management decisions of Payers or where Provider failed to comply with the terms or conditions of this Agreement. Provider may bill or charge individuals who were not Members at the time that services were rendered.

4.5 **Member Hold Harmless.** In no event including, but not limited to, nonpayment by or insolvency of Network, KFHP-NW or a Payer, or breach of this Agreement, shall Provider bill; charge; collect a deposit from; seek compensation, reimbursement, or remuneration from; impose surcharges; or have any recourse against any Member, person acting on the Member's behalf, or any person other than the responsible Payer for Covered Services provided under this Agreement, except for Member Cost Share payment. The terms of this Section shall survive the termination or expiration of this Agreement regardless of the cause giving rise to termination, shall be construed to be for the benefit of Members, and shall supersede any oral or written agreement to the contrary now existing or hereafter entered into between Provider and the Member or persons acting on the Member's behalf.

4.6 **Coordination of Benefits.** When a Payer accessing the rates under this Agreement is the primary payer under applicable coordination of benefit principles, that Payer shall pay in accordance with this Agreement. When such Payer is secondary under applicable coordination of benefit principles, Provider is owed an amount that, when added to the amount payable by the primary payer, equals the amount that would be owed under this Agreement without coordination of benefits, unless otherwise required by law. However, if Provider provides services for an employment-related injury or illness compensable under workers' compensation or employment liability law, Provider shall look to the applicable workers' compensation carrier or responsible employer for compensation and shall not be entitled to additional payment under this Agreement for such services paid under workers' compensation or employment liability law.

4.7 **Liens and Third Party Claims.** In instances of third party liability claims (involving, for example, liability carriers), Provider shall accept the amount payable under this Agreement as payment in full. Provider shall not, directly or indirectly through assignment or otherwise, assert

any lien claim, subrogation claim, or any other claim against a Member, or any other person or organization against which a Member may hold a potential claim for personal injury, or against the proceeds of a Member's personal injury recovery based on Services provided to a Member for an injury or illness allegedly caused by a third party.

4.8 **Audit, Recoupment, and Offset.** Unless otherwise required by law, Network, Provider, Plan, Payer, and their authorized agents may audit paid claims to verify the appropriateness and amount of payment so long as such audit takes place within two years of the date of payment or denial (or such longer period as may be set forth in an Other Payer's Plan or as required by a government program), except in cases of fraud, for which no time limit applies. Unless otherwise required by law, a refund or payment to correct an undisputed overpayment or underpayment shall be due upon demand, and failure to make such payment within 30 days of receipt of a demand shall entitle the Payer to offset, recoup or deduct the amount owed from any other amounts owed to Provider. To the maximum extent permitted by law, Payers are authorized to offset and recoup the amount of any debt owed by Provider to Payer against any debt or money owed Provider. This Section shall survive the termination or expiration of this Agreement.

## ARTICLE 5 TERM AND TERMINATION

5.1 **Term.** This Agreement shall begin on the Effective Date and, subject to earlier termination as described in this Article 5, shall continue for an initial term of one year. At the expiration of this initial term, this Agreement shall automatically renew for one year periods thereafter unless any party gives the other prior written notice of non-renewal at least 90 days prior to the end of the initial term or a renewal term.

5.2 **Termination Without Cause.** Notwithstanding Section 5.1 (Term), this Agreement may be terminated by a party without cause at any time by giving the other party prior written notice of no less than ninety (90) days.

5.3 **Termination With Cause.** This Agreement may be terminated upon written notice by a party for material breach by the other party, provided that (a) such non-breaching party gives at least 60 days prior written notice of termination to the party in breach and a description of the other party's breach, and (b) such material breach is not cured during the 60 day notice period. Provider's failure to comply with Section 2.3 (Licensure and Credentials) or Section 2.6 (Policies) shall be deemed a material breach.

5.4 **Immediate Termination.** Any of the following events shall, at the sole discretion of Network, result in the immediate termination or suspension of this Agreement, upon written notice to Provider: (1) the withdrawal, debarment, suspension, expiration, restriction or non-renewal of any federal, state or local license, certificate, approval or authorization of Provider required to render Services; (2) the bankruptcy, dissolution or receivership of Provider, or an assignment by Provider for the benefit of creditors; (3) the loss or material limitation of Provider's liability insurance described in this Agreement; (4) a determination by Network that Provider's continued participation in this Agreement could result in imminent and substantial harm to Members; (5) sanction under, debarment, suspension, exclusion or "opt out" of Provider from participation in any governmental sponsored program including, but not limited to, Medicare or Medicaid, or identification of Provider on a federal list of sanctioned or excluded entities and individuals, including lists maintained by the Department of Health and Human

Services, General Services Administration, Office of Inspector General and Office of Foreign Assets Control; (6) the conviction of Provider of any crime; (7) the revocation or suspension of Provider's accreditation or credentialing status; or (8) a change of ownership or control of Provider.

#### 5.5 **Effect of Termination.**

A. **Cooperation in Transfer of Members.** Upon termination or expiration of this Agreement, Provider shall cooperate in the timely and efficient transfer of Members to other facilities designated by the Payer. Network shall arrange for timely notification of Members of the termination or expiration of this Agreement.

B. **Survival.** Termination or expiration shall not affect those rights, powers, remedies, liabilities, and obligations that accrued or arose before termination or expiration. Termination or expiration shall also not affect those provisions of this Agreement expressly stated to survive termination or expiration.

C. **Continuation of Care.** Upon termination or expiration of this Agreement, Provider shall continue to provide (and Payer shall continue to compensate Provider for) Services pursuant to this Agreement and the Policies to Members who are under the care of Provider at the time of termination or expiration until the later to occur of the discharge or transfer of the Member in accordance with an appropriate professional standard of care or such time period as may be prescribed by applicable law.

5.6 **Suspension of Participation.** Any of the following events may result in Network's immediate suspension, until cured to Network's satisfaction, of a practitioner or site of Provider providing Services under this Agreement from participation in this Agreement (without terminating or suspending the Agreement), upon written notice to Provider: (1) the withdrawal, debarment, suspension, expiration, restriction or non-renewal of any federal, state or local license, certificate, approval, or authorization of such practitioner or site required to render Services; (2) the failure of the practitioner or site to comply with KP's credentialing requirements, and if applicable to practitioner, the loss or restriction of practitioner's medical staff membership or clinical privileges (3) sanction under, debarment, suspension, or exclusion of practitioner or site from participation in any governmental sponsored program including Medicare or Medicaid, "opt out" from any federal program including Medicare or Medicaid, or identification on a federal list of sanctioned or excluded entities and individuals, including lists maintained by the Department of Health and Human Services, General Services Administration, Office of Inspector General and Office of Foreign Assets Control; (4) the conviction of practitioner or site of any crime; (5) failure of practitioner or site to comply with law or Policies following a reasonable request for compliance by Network; or (6) a determination by Network that practitioner's or site's continued participation in this Agreement could result in imminent and substantial harm to Members.

## ARTICLE 6 DISPUTE RESOLUTION

6.1 **Member Grievance.** Provider agrees to (1) cooperate with and participate in Member appeal, grievance and external review procedures; (2) provide the Plan with the information necessary to conduct Member appeal, grievance and external review procedures; and (3) abide by decisions of Member appeals, grievance and review committees.

6.2 **Provider Appeals Process.** Each Plan shall provide an internal mechanism whereby Provider may raise issues, concerns, controversies or claims arising from or related to this Agreement. Specifically, each Plan shall maintain an appeals process pursuant to which Provider may seek to resolve disputes arising from this Agreement. This appeals process shall be exhausted before Provider may pursue further action against a Plan or Payer.

6.3 **Disputes Between the Parties.**

A. **Arbitration.** With respect to disputes, controversies, or claims arising from or related to this Agreement (“Disputes”), and except as stated in Section 6.3B below, Provider hereby waives the right to civil trial of any Dispute and agrees to bind itself to arbitration of such Disputes to the extent allowed by applicable law. Likewise, and except as stated in Section 6.3B below, Network shall waive the right to civil trial of any Dispute and agrees to bind itself to arbitration of such Disputes to the extent allowed by applicable law. Provider or Network may, by written notice to the other party, submit any Dispute to confidential arbitration administered by an Alternative Dispute Resolution (“ADR”) organization to which they mutually agree, including, but not limited to, JAMS. A party may initiate confidential arbitration by providing a written arbitration demand (“Demand”) to the other party by stating the nature of the Dispute and the damages sought. Upon tender of the Demand, the parties shall use their best efforts to agree on an ADR organization to administer the confidential arbitration. If the parties to the Dispute cannot agree on an ADR organization to administer the confidential arbitration within 30 calendar days from the date on which the Demand was tendered, the Dispute shall be administered by JAMS in accordance with the JAMS Comprehensive Arbitration Rules & Procedures, except this Agreement shall control should it conflict with the JAMS Rules. The parties shall sign a confidentiality agreement before arbitration that shall make the entire Dispute confidential (except as required by law). The Dispute shall be arbitrated before a single arbitrator, who may be chosen by the parties. If the parties are unable to agree on an arbitrator, the arbitrator shall be chosen pursuant to the rules of the ADR organization to which they have mutually agreed or, if there is no such agreement, the JAMS Comprehensive Arbitration Rule 15. In such instance where the parties are unable to agree upon an arbitrator, the potential arbitrators shall be retired judges; if no such retired judges are available, the potential arbitrators may be attorneys with at least fifteen (15) years of experience including some experience in managed health care and integrated health care delivery systems. The parties shall be responsible for their own attorneys’ fees and costs incurred in preparing for and attending the arbitration. The parties to the arbitration (including, but not limited to, proper parties joined in the arbitration) shall share equally the fees of the arbitrator and the ADR process. The parties agree that any and all proper parties may be joined in the arbitration, but the parties agree to proceed with arbitration of all Disputes between them even if other parties refuse to participate. The arbitrator shall prepare the award in writing, including factual findings and the legal basis and other reasons on which the award is based. The decision and award shall be reviewable only pursuant to the Federal Arbitration Act or its state law equivalent. Judgment upon the award rendered may be entered in any court of competent jurisdiction. This provision shall survive the termination or expiration of this Agreement.

B. **Injunction.** Notwithstanding Section 6.3A, the parties agree that Disputes involving certain breaches of the Agreement, including without limitation a breach of the confidentiality obligations, would cause irreparable injury to the injured party that could not be compensated adequately in damages. The parties further agree that such injured party shall be

entitled (in addition to any other remedies or damages) to remedies of injunction, specific performance, or restraining orders, which remedies do not require arbitration as a prerequisite. In such instance, the parties agree that the injured party may seek remedies of injunction, specific performance, or restraining orders in a civil court of competent jurisdiction.

## ARTICLE 7 RECORDS AND CONFIDENTIALITY

7.1 **Maintenance of Records.** Provider shall maintain its financial, accounting, administrative, and patient medical records in a current, detailed, organized and comprehensive manner in accordance with prudent industry practice, applicable laws, and accreditation standards. All Member medical records shall be treated by Provider as confidential in accordance with applicable laws. Provider shall maintain these records with respect to a Member for the longer of six years after the last date Services were provided to the Member or the period required by law. Should Provider experience a disclosure of Member information impermissible under state privacy laws or the privacy rules of the Health Insurance Portability and Accountability Act, Provider shall notify Network of the nature of the disclosure and the identity of the Members involved and shall take all steps required by law and reasonable business practice to remedy, mitigate and report the disclosure. This Section shall survive the termination or expiration of this Agreement, regardless of the circumstances of termination or expiration.

7.2 **Access to Records.** In accordance with applicable law, Network, KP, the applicable Plan and Payer, their authorized agents, and authorized government and accreditation officials shall have access to (including electronic access where practicable), a right to photocopy, and upon reasonable notice, a right to perform site visits related to, all financial, accounting, administrative, and patient medical records (including electronic images that are part of medical records) pertaining to Members for the purpose of meeting legal, regulatory and accreditation requirements applicable to the Plans; assessing quality of care, conducting medical evaluations and audits; performing utilization management functions; verifying the accuracy of amounts paid or payable to Provider; and other functions of a Plan. In addition, Provider shall supply periodic reports pertaining to Services provided to Members as the parties may, from time to time, agree or as otherwise required for Plans to meet their legal and accreditation requirements. Photocopies of medical records and other files, reports, books, and records shall be without charge to Network, Payers and Plans unless otherwise required by law. Provider agrees to allow access to or supply copies of such records, as requested, within 14 days of the receipt of a request, where practicable, and in no event later than the date required by any applicable law or regulatory or accreditation authority. This Section shall survive the termination or expiration of this Agreement, regardless of the circumstances of termination or expiration.

## ARTICLE 8 RELATIONSHIP OF PARTIES

8.1 **Communication with Members.** Nothing in this Agreement shall be construed to limit Provider's ability to freely communicate with a Member or the Member's authorized representative about the Member's treatment options.

8.2 **Independent Contractor.** Provider is an independent contractor to Network. Nothing in this Agreement is intended to create, nor shall it be construed to create, between Network and

Provider a relationship of principal, agent, employee, partnership, joint venture or association. Network and Provider have no authorization to enter into any contracts, assume any obligations, or make any warranties or representations on behalf of the other. No individual through whom Provider renders Services shall be entitled to or shall receive from Network compensation for employment, employee welfare and pension benefits, fringe benefits, or workers' compensation, life or disability insurance or any other benefits of employment, in connection with providing Services. Provider represents and warrants that it shall be responsible for all legally required tax withholding for itself and its employees.

8.3 **Government Contractor.** As an organization with federal government contracts, Network and the Kaiser Payers are subject to various federal laws, regulations and executive orders (such as regarding equal opportunity and affirmative action), which may apply to Network's subcontractors. Notice of such laws, regulations, and executive orders is provided in Exhibit "Federal Program Compliance" in the Section on the Federal Employee Health Benefits Program. If Provider is not otherwise subject to compliance with such laws, regulations and executive orders, their reference in this Agreement shall not be deemed to impose such requirements upon Provider.

8.4 **Proprietary Information.** Provider and Network agree the Proprietary Information of the other is the exclusive property of the other and that they have no right, title or interest in the Proprietary Information of the other. Provider and Network agree to keep Proprietary Information strictly confidential and agree not to disclose any Proprietary Information to any third party, except (i) to governmental or accreditation authorities having jurisdiction, (ii) as required in legal proceedings or government administrative proceedings, (iii) in the case of Network's disclosure, to Members, Plans, Payers, affiliates in the Kaiser Permanente Medical Care Program, consultants and vendors under contract with Network, or (iv) as otherwise directed by the other party in writing. This Section shall survive the termination or expiration of this Agreement, regardless of the circumstances of termination or expiration.

#### 8.5 **Insurance.**

A. **Provider's Insurance.** Provider, at Provider's sole cost and expense, shall procure and maintain such policies of general and professional liability and other insurance (or programs of self insurance that are adequately funded according to sound actuarial principles) at minimum levels required from time to time by Network, but in no event less than \$1,000,000 per claim/ \$3,000,000 annual aggregate for professional liability insurance and \$1,000,000 per claim/ \$2,000,000 annual aggregate for comprehensive general liability insurance. Such insurance coverage shall cover the acts and omissions of Provider as well as those of Provider's agents and employees. Provider may obtain one or more claims-made policies to fulfill its obligations under this Section so long as Provider obtains any extended reporting endorsements (tail coverage) for such policies as may be necessary to provide continuous coverage without interruption throughout the term of this Agreement and for at least ten (10) years following termination or expiration of this Agreement. Provider shall also procure and maintain workers' compensation insurance and unemployment insurance to the extent required by law, as well as a fidelity bond to the extent Provider renders Services in Members' homes or custodial care locations. Provider agrees to deliver memorandum copies of such policies to Network upon request. Provider agrees to make best efforts to provide to Network at least 30 days advance notice, and in any event shall provide notice as soon as reasonably practicable, of any cancellation or material modification of these policies.



B. **Network's Insurance.** Network, at its sole cost and expense, shall procure and maintain such policies of general and professional liability and other insurance (or programs of self-insurance that are adequately funded according to sound actuarial principles) as shall be necessary to insure itself and its employees against any claim or claims for damages arising by reason of personal injuries or death occasioned directly or indirectly in connection with the performance of any service by Network under this Agreement.

**8.6 Mutual Indemnification.**

A. **Provider.** Provider shall indemnify and hold harmless Kaiser Foundation Hospitals, Northwest Permanente, P.C., KFHP-NW and their officers, agents and employees from and against all claims and damages for or in connection with, injury (including death) or damage to any person or property to the extent resulting from the negligent or otherwise wrongful act or failure to act or willful misconduct of Provider.

B. **Network.** Network shall indemnify and hold harmless Provider and its officers, agents, employees and partners from and against all claims and damages for or in connection with, injury (including death) or damage to any person or property to the extent resulting from the negligent or otherwise wrongful act or failure to act or willful misconduct of Network.

**ARTICLE 9  
MISCELLANEOUS**

9.1 **Notice.** Any notices to be given under this Agreement shall be in writing, signed by an authorized signatory, and shall be deemed given upon receipt if sent to the addresses listed below as follows: (1) personally delivered; (2) sent by United States Postal Service, postage prepaid, certified, and return receipt requested; or (3) sent by a commercial delivery service with proof of delivery. Any party may change its address for notice purposes by written notice to the other party.

**NETWORK**

Director of Provider Contracting  
Northwest Permanente, P.C.  
500 N.E. Multnomah Street, Suite 100  
Portland, Oregon 97232

**PROVIDER**

Administrator  
Clackamas Co Community Health Division  
2051 Kaen Road, Suite 367  
Oregon City, Oregon 97045-4035

9.2 **Assignment and Delegation.** Except as otherwise provided in this Agreement, Provider shall not assign this Agreement, subcontract or delegate any of its duties and obligations under this Agreement without the prior written consent of Network. Any change of ownership or control of Provider shall be deemed an assignment. Any succession or assignment shall not

relieve or otherwise affect the liability of Provider, which shall remain jointly and severally liable with the successor or assignee.

9.3 **No Third Party Beneficiaries.** With the exception of Section 4.5 (Member Hold Harmless) and with respect to KP and Payers, nothing in this Agreement shall be construed to give any person other than Provider or Network any benefits, rights or remedies.

9.4 **Force Majeure.** The parties shall be excused from any inability to meet their obligations under this Agreement due to extraordinary circumstances beyond their reasonable control occasioned by war, acts of government, labor disputes, acts of terrorism, fire, flood, earthquake, extreme weather or other acts of nature. The affected party shall give notice to the other party as soon as practicable of any such circumstance.

9.5 **Use of Name.** Each party reserves to itself the right to, and the control of the use of, its own names, symbols, trademarks and service marks, presently existing or hereafter established, and no party shall use another party's names, symbols, trademarks or service marks in any advertising or promotional materials or communication of any type or otherwise without the latter party's prior written consent; provided, however, Network and Plans may use the name, address and telephone number of Provider in lists of contracting providers and other marketing materials.

9.6 **Governing Law.** Except as preempted by federal law, this Agreement shall be governed by the laws of the state in which Provider is located, without application of the conflict of laws provisions of such state.

9.7 **Severability.** Any determination that any provision of this Agreement or any application thereof is invalid, illegal, or unenforceable shall not affect the validity, legality, and enforceability of such provision in any other instance, or the validity, legality or enforceability of any other provision of this Agreement.

9.8 **Waiver.** A failure of any party to exercise any provision of this Agreement shall not be deemed a waiver. To be effective, any waiver of any provision of this Agreement shall be in writing and signed by the party against whom the waiver is sought to be enforced. Any such waiver shall not operate or be construed as a waiver of any other provision of this Agreement or a future waiver of the same provision.

9.9 **Amendment.** This Agreement constitutes the entire understanding of the parties, and no changes, amendments or alterations shall be effective unless in a writing signed by the parties. Notwithstanding any other provision of the Agreement, if either party reasonably determines that a modification of this Agreement is necessary to cause it to be in compliance with state or federal law or the requirements of an accrediting or regulatory agency or a government contract, that party shall give the other party written notice of the proposed modification, the justification for the modification, and the date on which it is to go into effect, which shall not be less than 30 days following the date of the notice (unless a shorter period of time is required by law). The modification shall go into effect on that date. The party providing notice shall consider any objection made by the other party concerning the proposed modification during the notice period.

9.10 **Interpretation.** The headings contained in this Agreement are included for purposes of convenience only, and shall not affect in any way the meaning or interpretation of any of the terms or provisions of this Agreement. This Agreement shall be interpreted according to its fair intent and not for or against any one party on the basis of whether such party drafted the

Agreement. All references to “including” or “include(s)” shall mean “including, without limitation” and “include(s) without limitation,” respectively. The omission of a particular example or the inclusion of any examples shall not be construed to broaden or limit the effect of the language. Any reference to a statute, regulation, government agency or program, regulatory body, accreditation standard or accreditation organization refers to the statute, regulation, government agency or program, regulatory body, accreditation standard or accreditation organization as amended from time to time, and to any successor statute, regulation, government agency or program, regulatory body, accreditation standard or accreditation organization. References to Provider shall include references to Provider, any employees or agents of Provider, and any Subcontractors.

9.11 **Counterparts**. This Agreement may be executed in separate counterparts, none of which need contain the signatures of all parties, and each of which, when so executed, shall be deemed an original and all together constitute and be one of the same instrument. Facsimile or electronic signatures shall be as valid as original signatures.

9.12 **No Exclusivity**. This is not an exclusive agreement. Provider and Network may enter into similar agreements with other parties.

9.13 **No Guarantee**. There is no representation, warranty, guarantee, or covenant that any minimum volume or value of business will be referred to Provider. Provider does not have a right to participate in any particular Plan, line of business, product, or network of a Plan.

9.14 **Remedies Cumulative**. The rights and remedies of this Agreement shall not be exclusive and are in addition to any other rights and remedies provided by law.

9.15 **Entire Agreement**. This Agreement and its Exhibits constitute the complete and sole contract between the parties regarding the subject hereof and supersede all prior or contemporaneous oral or written representations, communications, proposals, or agreements not expressly included herein. This Agreement and its Exhibits may not be contradicted or varied by evidence of prior, contemporaneous or subsequent oral representations, communications, proposals, agreements, prior course of dealings or discussions of the parties. There are no oral agreements among the parties. Provider has not relied on any data, financial analysis, reports, notes, proposals, conclusions or projections, whether made orally or in writing, made by Network or any of its representatives, agents, employees or advisors, in connection with negotiation, acceptance, execution or delivery of this Agreement by Provider.

[next page is signature page]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective duly authorized representatives.

**NETWORK**

**Northwest Permanente, P.C.**

**PROVIDER**

**Clackamas County, signing on behalf  
of the Board of Commissioners by:**

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

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

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

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

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

Print Name: Richard Swift

Title: Director

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

**LIST OF EXHIBITS**

The exhibits applicable to this Agreement are marked below.

Name of Exhibit	Applicable	Not Applicable
Compensation and Services	X	
Federal Program Compliance	X	
National Committee for Quality Assurance (“NCQA”) Required Provisions	X	
Washington State Compliance		X
Washington State Medicaid Program Compliance		X
Oregon State Compliance	X	
Oregon State Medicaid Program Compliance	X	
Oregon OEBB and PEBB Requirements	X	
Tax Identification		X
Oregon Workers’ Compensation Managed Care Organization Provider Panel		X

**EXHIBIT**  
**COMPENSATION AND SERVICES**

1. **Definitions**

A. **"Billed Charges"** means Provider's total charges based on its commercial fee schedule effective as of the encounter date.

B. **"CMS"** means the Centers for Medicare and Medicaid Services.

C. **"Commercial Member"** means a Member who is not a Medicaid Member or a Medicare Member. Typically, a Commercial Member's primary source of funding for health care services is derived from an insurance product or an employer-based self-funded group.

D. **"Do Not Bill Events"** (or **"DNBEs"**) mean:

(1) a Hospital Acquired Condition addressing foreign objects retained after surgery, as identified by Centers for Medicare and Medicaid Services ("HAC") - summarized at <http://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/Downloads/wPOA-Fact-Sheet.pdf> - when such HAC is not identified and documented as having been present upon admission; and

(2) the three surgical errors described in the CMS National Coverage Determination dated June 12, 2009 and documented at <https://www.cms.gov/transmittals/downloads/R101NCD.pdf>, which include surgery on the wrong patient, surgery on the wrong body part, and wrong surgery performed on a patient ("SEs"); and

(3) if CMS subsequently adds a new Hospital Acquired Condition applicable to Medicare fee-for-service claims and KP's policy on DNBEs is amended to include such new condition, Provider agrees that the term HAC shall include such new condition within 90 days of written notice from KP.

E. **"Medicaid Member"** means a Member enrolled in the Medicaid program through a Medicaid contract between KFHP-NW (or another Kaiser Payer) on the one hand and a state (or organization under contract with a state) on the other hand.

F. **"Medicare Member"** means a Member enrolled in the Medicare program through a Medicare Advantage contract or a Medicare Cost contract between KFHP-NW (or another Kaiser Payer) and CMS.

G. **"Services"** means all ordinary and necessary outpatient chemical dependency professional services normally rendered by Provider's practitioners and for which Provider may submit a professional bill for reimbursement.

**"Outpatient Chemical Dependency Services"** include basic alcohol and chemical dependency outpatient Services to Members that have an authorized referral. Services shall include the following elements: intensive outpatient

treatment; recovery support phase; individual sessions, as needed; family components; and urinalysis.

**2. Authorization Requirements for Covered Services**

**A. Initial authorization of Covered Services:**

Medical evaluations (histories, physicals and lab work) shall be completed by Network and sent to Provider prior to, or concurrent with treatment. Network shall provide ongoing medical follow-up. Provider staff shall not order additional ancillary Services without prior approval by the NWP medical director, clinical director or designee. Provider shall provide Services under this Agreement for Members who have been evaluated by the Department of Addiction Medicine and require addiction treatment Services.

**B. Re-authorization of Covered Services:**

If a Member has a 30-day or longer lapse in treatment, they must be reassessed by Network prior to receiving additional Services. If a Member is authorized to receive additional Services, a new referral will be generated and communicated to Provider.

**3. Compensation**

**A.** Compensation varies based on the type of Member receiving Services. Except as otherwise indicated, the parties intend to follow CMS Medicare payment rules for all Members.

(1) **Commercial and Medicare Members.** Services that are Covered Services rendered to Commercial and Medicare Members shall be paid at the lesser of (a) Billed Charges or (b) the rates shown in the fee schedule below. Services that are billed outside of the fee schedule shall be denied.

**Outpatient Chemical Dependency Services**

<b>Code</b>	<b>Modifier</b>	<b>Description</b>	<b>Unit</b>	<b>Rates</b>
90849	HF	Multiple-family group psychotherapy	Per visit	\$45.09
90887	HF	Consultation with family - Explanation of psychiatric, medical examinations, procedures, and data to other than patient.	Per visit	\$90.14
H0001	HF	Alcohol and/or Drug Assessment	Per visit	\$139.70
H0004	HF	Behavioral health counseling and therapy, per 15 minutes – four (4) units max per visit	15 Minutes	\$22.47
H0005	HF	Alcohol and/or drug services; group counseling by a clinician	Per visit	\$39.66
H0038	HF	Self-help/peer services, per 15 minutes - four (4) units max per visit	15 Minutes	\$15.00
H0048	HF	Alcohol and/or drug testing; Collection and handling only, specimens other than blood	Per visit	\$11.48
T1006	HF	Alcohol and/or substance abuse services; Family/couple counseling	Per visit	\$87.56

(2) **Medicaid Members.** When applicable, Services that are Covered Services rendered to Medicaid Members shall be paid at the applicable rates described in state statutes or in promulgated regulations.

B. If there is a question related to appropriateness of codes or diagnosis codes being used by Provider to bill for Services, Provider shall work with Network to assure that acceptable codes and rates are used.

#### 4. **Billing and Reimbursement Related to Do Not Bill Events**

In the event any Member experiences a DNBE while receiving Covered Services under the Agreement, Provider agrees to the following:

A. Report the DNBE. Provider shall report the DNBE to the applicable Payer: For Kaiser Payers, to Network Risk Management at (503) 813-2000 and for Other Payers, to the Self-Funded Customer Service phone number at (866) 213-3062. However, Provider shall not be required to waive any privilege or confidentiality rights under law in order to comply with this subsection.

B. Waive or Reimburse Fees. Provider shall waive fees otherwise owed by Payers and Members (or reimburse such fees that may have already been paid by Payers or Members) that are directly related to the DNBE, whether the DNBE is reported by the Provider or later discovered by KP. "Directly related" fees mean fees associated with medically necessary health care services required to treat the DNBE, taking into account all relevant factors.

By way of example for HACs: If a HAC occurs and Provider is reimbursed according to a CMS MS-DRG methodology, then Provider's reimbursement shall be the applicable MS-DRG payment assuming the absence of the HAC as a secondary diagnosis; if a HAC occurs and Provider is reimbursed according to a case rate, then Provider's reimbursement shall be the case rate that would have applied absent the HAC; and if a HAC occurs and Provider is reimbursed according to a per diem or percent of charges, then the days or charges directly related to the HAC shall be waived (or later reimbursed).

In addition, Provider shall consider, on a case-by-case basis at its discretion, waiving (or later reimbursing) fees otherwise owed by Payers or Members for medically necessary health care services required to treat the DNBE subsequent to the encounter at which the DNBE occurred.

C. Claims Submission. Where Provider submits Claims on a UB-04 to Payers, Provider shall (a) include on all inpatient Claims to Payers for Covered Services to Members, present on admission ("POA") indicators in the manner required by CMS for Medicare fee-for-service claims and (b) for any DNBEs recognized prior to submitting a Claim, include on all Claims to Payers for Covered Services to Members, the applicable International Classification of Diseases ("ICD") codes and all applicable standard modifiers (including CMS National



Coverage Determination (“NCD”) modifiers for SEs) in the manner required by CMS for Medicare fee-for-service claims.

Where Provider submits Claims on a CMS 1500 to Payers and recognizes that a DNBE has occurred prior to submitting a Claim, Provider shall include on all Claims to Payers for Covered Services to Members, the applicable ICD codes and all applicable standard modifiers (including CMS NCD modifiers for SEs) for any DNBE in the manner required by CMS for Medicare fee-for-service claims.

Where Provider recognizes that a DNBE has occurred prior to submitting a Claim to a Payer, Provider’s Claim to the Payer shall reflect all services provided (including those related to the DNBE) and all associated fees (including those related to the DNBE), with an adjustment in fees to reflect the waiver of fees directly related to the DNBE.

D. Process for Resolving DNBE Reimbursement Issues. Payers and Provider shall work collaboratively to resolve promptly DNBE determinations and corresponding reimbursement issues. Any disputes related to DNBE reimbursement shall be resolved according to the dispute resolution process in the Agreement.

E. Reimbursement. Reimbursement by Provider to Payers or Members for fees directly related to a DNBE that were already paid to Provider, shall be deemed an overpayment subject to Section 4.8 (Audit, Recoupment, and Offset) of the Agreement and made within 30 days of the parties’ resolution of DNBE determinations and reimbursement issues, unless otherwise required by law.

F. Compensation Determination. The parties acknowledge that this Section 4 is solely for the purpose of determining compensation to Provider and shall not constitute or imply any admission of liability.

**EXHIBIT**  
**FEDERAL PROGRAM COMPLIANCE**

**A. Medicare Advantage Program**

Kaiser Foundation Health Plan of the Northwest (“KFHP-NW”) has entered into a Medicare Advantage Organization contract with the Centers for Medicare and Medicaid Services (“CMS”). KFHP-NW has contracted with Network to provide certain services under such CMS contract. CMS and KFHP-NW require Network to include the provisions of Section A of this Exhibit in any subcontracts. This Section A is incorporated by reference into and made part of the Agreement with respect to Services rendered to Members enrolled in the Medicare Advantage program (“MA Members”). In the event of a conflict or inconsistency with any term or condition in the Agreement relating to Services rendered to MA Members, this Section A shall control.

Network shall itself, or shall cause KFHP-NW to, satisfy the obligations of KFHP-NW under Section A of this Exhibit. With respect to MA Members, KFHP-NW is the entity ultimately responsible for the obligations under this Section A.

1. **Records.** [42 CFR §422.118, §§422.504(a)(13), (d), and (i)(3)(iii), MMCM Ch. 11, §100.4] Provider shall (a) abide by all federal and state laws regarding confidentiality and disclosure of medical records, or other health and enrollment information; (b) ensure that medical information is released only in accordance with applicable federal or state law, or pursuant to court orders or subpoenas; (c) maintain medical records and related information in an accurate and timely manner and for ten years after termination or expiration of this Agreement or the date of completion of any audit, whichever is later; and (d) ensure timely access by MA Members to the records and information that pertain to them.
2. **Prompt Payment.** [42 CFR §422.520(b)(1), §422.504(c), MMCM Ch. 11, §100.4] Provider shall be paid for Covered Services rendered to MA Members within the lesser of 45 days of receipt of a properly submitted, supported and undisputed claim or the time period set forth elsewhere in this Agreement.
3. **Member Hold Harmless.** [42 CFR §§422.504(g)(1)(i)&(iii), §422.504(i)(3)(i), §422.105(a), §422.100(g), MMCM Ch. 11, §100.4, 42 USC 1395w-22(a)(7)] Provider agrees that in no event including, without limitation, nonpayment by or insolvency of KFHP-NW or Network or breach of this Agreement, shall Provider bill; charge; collect a deposit from; seek compensation, reimbursement, or remuneration from; impose surcharges; or have any recourse against a MA Member or a person acting on behalf of a MA Member for fees that are the legal obligation of KFHP-NW or Network. This Agreement does not prohibit Provider from collecting Member Cost Share or fees for non-Covered Services to the extent permitted by the applicable health benefit plan; however, Member Cost Share may not be imposed for influenza and pneumococcal vaccines that are Covered Services. If a person who correctly identifies himself as a MA Member seeks Services from Provider without an applicable authorization or referral, Provider may only charge the MA Member for customary in-plan Member Cost Share

unless Provider notified the MA Member in advance that the Services would be Covered Services only if further action is taken by the MA Member per applicable health benefit plan rules. If a MA Member is also enrolled in Medicaid and Medicaid is responsible for the Member Cost Share, Provider shall not hold MA Member liable for such Member Cost Share, and Provider shall accept payment pursuant to this Agreement as payment in full or bill Medicaid for such Member Cost Share. Sections A.3 and A.4 shall be construed in favor of the MA Member as an intended third party beneficiary, shall survive the termination of the Agreement, the insolvency of KFHP-NW or Network, and shall supersede any oral or written agreement between Provider and a MA Member.

4. **Continuation of Benefit.** [42 CFR §422.504(g)(2), MMCM Ch. 11, §100.4, MA Agreement, Article V, Section C.1] In the event of the termination or expiration of this Agreement, KFHP-NW's or Network's insolvency, or other cessation of business, Provider shall continue to provide Covered Services for all MA Members through the period for which premium was paid and, for MA Members who are confined in an inpatient facility on the date of insolvency or other cessation of business, through the date of discharge.

5. **Audit and Inspection.** [42 CFR §§422.504 (e)(1), (e)(2), (e)(4) & (i)(2), MMCM Ch. 11, §100.4, MMCM Ch. 21, Section 50.6.1] The Department of Health and Human Services, the U.S. Comptroller General, or their designees have the right audit, evaluate, collect and inspect any pertinent contracts, books, documents, papers, records, facilities and computer/electronic systems of Provider involving transactions related to KFHP-NW's Medicare Advantage contract during the period of this Agreement and for ten years after termination or expiration of this Agreement or the date of completion of any audit, whichever is later. Provider shall retain such contracts, books, documents, papers, and records for this period.

6. **Accountability and Delegation.** [42 CFR §§422.504(i)(1),(3),(4)&(5), 42 CFR §422.562(a)(3), MMCM Ch. 11, §100.4, MMCM Ch. 21, §§ 40 and 50.6.6, MA Agreement, Article V, Sections D and E] KFHP-NW shall only delegate activities or functions to Provider pursuant to a written delegation agreement in compliance with CMS rules, which require, among other things, a covenant of Provider that it will comply with all applicable Medicare laws, regulations, and CMS instructions. To the extent KFHP-NW delegates any functions for which it is responsible, KFHP-NW is ultimately responsible to CMS for oversight and compliance and shall retain the right to monitor performance of the delegated functions and to revoke such delegation if KFHP-NW or CMS determines that performance is unsatisfactory. If KFHP-NW delegates the selection of providers, KFHP-NW retains the right to approve, suspend or terminate any such selection.

7. **Exclusion/Sanction.** [42 CFR §422.752(a)(8), §422.204(b)(3), §422.220, §423.120(c)(5)&(6), 42 USC §1320a-7 & §1320a-7a, MMCM, Ch. 6 §§60.2 & 70, MMCM Ch. 11 §100.4, MMCM Ch. 21 §50.6.8] Provider represents that (a) it is not excluded, debarred, sanctioned, suspended or otherwise ineligible from, by or for participation in any federal or state program, including Medicare and Medicaid, (b) with respect to Covered Services provided to MA Members, it does not knowingly employ or contract with an individual or entity so excluded, debarred, sanctioned, suspended, or otherwise ineligible, and (c) no practitioner

providing Covered Services to a MA Member has opted out of Medicare. Provider and any of its practitioners providing Covered Services to a MA Member shall be enrolled in Medicare. These representations shall be continuing throughout the term of this Agreement, and Provider shall promptly notify KFHP-NW if any representation can no longer be made.

8. **Certification of Data.** [42 CFR §422.504(l)(3), MMCM Ch. 11, §100.4] The chief executive officer of Provider, the chief financial officer, or an individual delegated the authority to sign on behalf of one of these officers, shall certify from time to time, as requested by KFHP-NW or Network, that the encounter data and other data supplied by Provider (based on its best knowledge, information, and belief) are accurate, complete and truthful.

9. **Termination.** [42 CFR §422.202(d)(4), §422.506(b), §422.510, §422.111(e), MMCM Ch. 6, §60.4, MMCM Ch. 11, §100.4] If this Agreement may be terminated without cause, the minimum period of notice shall be at least 60 days, but shall be greater if provided in this Agreement. If the Medicare Advantage contract between KFHP-NW and CMS is terminated or not renewed, this Agreement will be terminated as to MA Members, except to the extent KFHP-NW enters into a different form of contract with CMS, in which case Provider agrees to cooperate with KFHP-NW in meeting its requirements under the new contract until such time as this Agreement may be amended. If Provider provides primary care services to MA Members, Provider shall provide at least 30 days' notice before terminating the Agreement.

10. **Access to Books and Records.** [42 USC §1395x(v)(1)(I), 42 CFR §420.302(b)] If this Agreement is determined to be subject to the provisions of 42 USC §1395x(v)(1)(I), which governs access to books and records of contractors of Covered Services to MA Members, Provider agrees to permit representatives of the Secretary of the U.S. Department of Health and Human Services and the U.S. Comptroller General to have access to this Agreement and to the books, documents, and records of Provider, as necessary to verify the costs of this Agreement in accordance with criteria and procedures contained in applicable federal law.

11. **Advance Directives.** [42 CFR §§422.128(b)(1)(ii)(E)&(F), MMCM Ch. 11 §100.4] The MA Member's medical record shall reflect, in a prominent part, whether or not the MA Member has executed an advance directive. Provider may not condition the provision of care or otherwise discriminate against a MA Member based on whether or not the MA Member has executed an advance directive.

12. **Compliance.** [42 CFR §422.2, §§422.504(a)(8), (h),(i) & (j), §422.310(b), §422.562(a), §422.516, §422.503(b)(4)(vi), §422.2268, MMCM, Ch. 4 §10.6, MMCM Ch. 11, §§100.4 and 120, MMCM Ch. 21, §§ 30, 40, 50.1.3, 50.3.1, 50.3.2, 50.4.2, 50.6.6, 50.6.11 and 50.7.2] Provider shall comply and shall require any subcontractors providing services to MA Members, to comply with all applicable Medicare laws and regulations (including without limitation those designed to prevent or ameliorate fraud, waste and abuse), state and federal laws (including criminal laws, the False Claims Act, Anti-Kickback statute, Health Insurance Portability and Accountability Act or HIPAA, Civil Rights Act of 1964, Age Discrimination Act of 1975, Rehabilitation Act of 1973, Americans with Disabilities Act, Genetic Information Nondiscrimination Act of 2008), with CMS guidance and instructions, with KFHP-NW's policies and procedures, with applicable elements of KFHP-NW's compliance program

(including, without limitation, reporting of compliance issues, cooperation with KFHP-NW's routine monitoring and auditing of providers, and annual training and education, e.g., related to fraud, waste and abuse), and with applicable contractual obligations under KFHP-NW's Medicare Advantage contract, as amended from time to time. Failure to comply with KFHP-NW's compliance program may result in a corrective action or other appropriate action under the Agreement. In the event of changes to the governing laws, regulations, or CMS requirements applicable to the Medicare Advantage program, this Exhibit shall be amended to the extent required by any such later required changes. Provider shall cooperate, assist and provide records, data and information, as requested by KFHP-NW or Network, for KFHP-NW's compliance with Medicare requirements.

A. Provider shall provide information to KFHP-NW about disclosure of MA Members' Protected Health Information ("PHI," as defined by HIPAA) to entities outside the United States so that KFHP-NW may complete CMS's required Offshore Subcontractor Information and Attestation form; and if Provider discloses MA Members' PHI to entities outside the United States, Provider shall inform KFHP-NW of the fact of such disclosures within 15 days of contract execution or amendment, shall implement reasonable security policies and procedures auditable by KFHP-NW to protect such PHI, and shall report actual or suspected security breaches to KFHP-NW.

B. Provider acknowledges that funds received from KFHP-NW and/or Network are in whole or in part derived from federal funds.

C. Provider shall also cooperate with KFHP-NW's grievance and appeals procedures for MA Members.

D. If Provider engages in any marketing activities related to MA Members or the Medicare Advantage program (including distribution of any materials related to the Medicare Advantage program), Provider shall comply with all applicable Medicare Advantage marketing rules.

13. **Credentialing.** [42 CFR §422.204, §422.112(a)(5), §422.504(i)(4), MMCM Ch. 6, §70, MA Agreement, Article V, Section D.4] Provider agrees to cooperate with KFHP-NW's credentialing process for providers rendering Covered Services to MA Members (including recredentialing at least every 3 years). Provider agrees that KFHP-NW will review the credentials of Provider and (as applicable) its medical professionals or allow KFHP-NW to review, approve and audit Provider's credentialing process.

14. **Access to Services.** [42 CFR §§422.100(b)&(g), §§422.112(a)(1),(3),(6),(7),(8), §422.110(a), §422.206(a)(2), MMCM Ch. 11, §100.4, MMCM Ch.6, §40] Covered Services shall be available and accessible in a timely manner, during hours of operation convenient to the population served, and in a manner that does not discriminate against MA Members. Provider shall not discriminate against MA Members on the basis of health status (including medical condition, claims experience, receipt of health care, medical history, genetic information, evidence of insurability, conditions arising out of acts of domestic violence and disability), race, ethnicity, national origin, religion, sex, age, mental or physical disability, sexual orientation, or

source of payment. Services and information about treatment options shall be provided to MA Members in a culturally competent manner, including the option of no treatment, and with appropriate assistance for MA Members with limited communication skills and disabilities. Provider shall allow direct access (a) for all MA Members to influenza vaccines and (b) for women MA Members to screening mammography and women's health specialists for women's routine and preventive health care services. KFHP-NW shall assume financial responsibility for emergency and urgently needed services to MA Members in accordance with applicable law and health benefit plan rules, regardless of whether there is a prior authorization for the services.

15. **Quality Assurance.** [42 CFR §422.112(b)(5), §422.152, §§422.504(a)(3)(iii)&(5), MMCM Ch. 11, §100.4] Provider shall participate in and cooperate with KFHP-NW's quality assurance and improvement programs, including cooperating with any independent or external review organization retained by KFHP-NW as part of its quality assurance and improvement programs. Provider shall render Covered Services in a manner consistent with professionally recognized standards of care. Provider shall inform MA Members of specific health care needs that require follow-up and shall provide, as appropriate, training in self-care and other measures for MA Members to promote their own health.

16. **Subcontractors.** [42 CFR §422.504(i)(3)(iii)] If Provider provides Covered Services to MA Members through a subcontractor, Provider shall require such subcontractor to provide Services to MA Members consistent with KFHP-NW's contractual obligations.

17. **Encounter Reporting.** [42 CFR §422.310] In the event Provider does not submit standard claims for payment, Provider shall provide the information necessary for KFHP-NW to report to CMS all encounters for MA Members on a standard CMS 1500 or UB-04 form (or its successor form).

18. **Hospital Provisions.** [42 CFR §422.620] If Provider is a hospital, Provider shall provide MA Members with advance notice of hospital discharge appeal rights and cooperate with KFHP-NW and/or the applicable Quality Improvement Organization regarding appeals or grievances related to the discharge.

19. **Physician Provisions.** [42 CFR §422.208(c), §422.202(d)(1), §422.210, MMCM Ch. 11, §100.4, MMCM Ch.6 §80] Where Provider is a physician or physician group: (a) if the compensation arrangement places physician(s) at "substantial financial risk" as defined under the Physician Incentive Plan rules, the parties shall comply with such rules; and (b) if this Agreement is suspended or terminated, physician(s) shall be given written notice of the reasons for suspension or termination and, if applicable, the right to appeal.

## **B. Federal Employee Health Benefits Program**

Kaiser Foundation Health Plan of the Northwest ("KFHP-NW") has entered into a contract with the U.S. Office of Personnel Management ("OPM") to provide or arrange health care services for persons enrolled in the Federal Employees Health Benefits Program ("FEHBP"). KFHP-NW has contracted with Network to provide certain services under such FEHBP contract. OPM and KFHP-NW require Network to include the provisions of this Section B of this Exhibit in any

subcontracts. This Section B is incorporated by reference into and made part of the Agreement with respect to Services rendered to Members enrolled in FEHBP ("FEHBP Members"). In the event of a conflict or inconsistency with any term or condition in the Agreement relating to Services rendered to FEHBP Members, this Section B shall control.

Network shall itself, or shall cause KFHP-NW to, satisfy the obligations of KFHP-NW under Section B of this Exhibit. With respect to FEHBP Members, KFHP-NW is the entity ultimately responsible for the obligations under this Section B.

1. **Service Obligations.** [FEHBP contract §§1.9, 1.11, 1.20, and 1.26] Provider and its health care providers shall cooperate with KFHP-NW quality standards, implementation of patient safety improvement programs and disaster recovery plans, and assist KFHP-NW with collection of data for quality assurance records.
2. **Hold Harmless.** [FEHBP contract §2.9] In the event of (a) insolvency of KFHP-NW, Network or Provider, or (b) KFHP-NW's, Network's or Provider's inability to pay expenses for any reason, Provider shall not look to FEHBP Members for payment, and shall prohibit health care providers from looking to FEHBP Members for payment.
3. **Billing and Payment.** [FEHBP contract §§2.3(g), 2.6(b), and 2.11] Provider shall cooperate with KFHP-NW and Network in the performance of its obligations under the FEHBP contract to administer and coordinate benefits, pay claims and recoup erroneous payments (for which no time limit applies to such recoupments). Provider shall submit claims on the appropriate CMS 1500 form or UB-04 form (or the appropriate successor form) and shall make all reasonable efforts to submit claims electronically.
4. **Termination of FEHBP Contract.** [FEHBP contract §5.49] If the FEHBP contract is terminated by OPM, the Agreement and all subcontracts shall be terminated with respect to FEHBP Members, and the parties shall assign to the government, as directed by OPM, all right, title, and interest of KFHP-NW under the Agreement and subcontracts terminated.
5. **Continuation of Care.** [FEHBP contract §1.24] In the event KFHP-NW terminates its FEHBP contract with OPM or terminates this Agreement other than for cause, Provider, KFHP-NW, and Network agree that specialized care shall continue to be rendered and paid under the terms of this Agreement for those FEHBP Members who are undergoing treatment for a chronic or disabling condition or who are in the second or third trimester of pregnancy for up to 90 days, or through their postpartum period, whichever is later. Provider shall also promptly transfer all medical records to the designated new provider during or upon completion of the transition period, as authorized by the FEHBP Member and shall give all necessary information to KFHP-NW and Network for quality assurance purposes.
6. **Confidentiality.** [FEHBP contract §1.6(b)] Provider shall hold confidential all medical records of FEHBP Members, and information relating thereto, except (a) as may be reasonably necessary for administration of the FEHBP contract, (b) as authorized by the FEHBP Member or his or her guardian, (c) as disclosure is necessary to permit government officials having authority to investigate and prosecute alleged civil or criminal actions, (d) as necessary to audit the

FEHBP contract, (e) as necessary to carry out the coordination of benefit provisions of the FEHBP contract, or (f) for bona fide medical research or educational purposes (only if aggregated).

7. **Maintenance and Audit of Records.** [FEHBP contract §§3.4, 5.7 and 48 CFR §§2.101, 52.215-2] OPM and other government officials have the right to inspect and evaluate the work performed or being performed under the FEHBP contract, records involving work or transactions related to the FEHBP contract, and the premises where the work is being performed, at all reasonable times and in a manner that will not unduly delay the work. If government officials or their authorized representatives request access, inspection or evaluation of such Provider records or premises, Provider shall cooperate by providing access to records and facilities until six years after final payment or settlement under the FEHBP contract.

8. **Notice of Significant Events.** [FEHBP contract §1.10 and 48 CFR §1652.222-70] Provider agrees to notify KFHP-NW and Network of any Significant Event within seven business days after the Provider becomes aware of it. A “Significant Event” is any occurrence or anticipated occurrence that might reasonably be expected to have a material effect upon Provider’s ability to meet its obligations under the Agreement.

9. **Compliance.** [FEHBP contract §§ 1.20, 2.7, 5.5, 5.19, 5.22, 5.23, 5.45, 5.47, 5.55, 5.56, 5.57, 5.59, 5.61, 5.64, 5.65, 5.69, 5.70, 5.71]

Provider and KFHP-NW shall comply with the Health Care Consumer Bill of Rights (at <http://www.opm.gov/insure/archive/health/cbrr.htm>), as amended from time to time, which addresses Members’ ability to participate fully in treatment decisions, respecting Members’ rights (including nondiscrimination), and protecting Members’ privacy. [FEHBP §1.20] Provider shall not employ or contract with any providers that provide Services to FEHBP Members and have been debarred, suspended or proposed for debarment by the federal government during the term of the Agreement. [FEHBP §5.47 and 48 CFR §52.209-6 (OCT 2015)] Neither KFHP-NW nor Network shall be liable for payment to Provider for services rendered by a provider debarred, excluded or suspended from participation in any federal program. [FEHBP §2.7] In addition, as requested, Provider shall cooperate with, assist, and provide information to KFHP-NW as needed for KFHP-NW’s compliance with all FEHBP contract requirements.

E. KFHP-NW is subject to various federal laws, executive orders and regulations regarding equal opportunity and affirmative action. This subsection 9A constitutes notice that Provider may be subject to the following Federal Acquisition Regulations (each a “FAR”) at 48 CFR Part 52 and the Office of Federal Contract Compliance Regulations at 41 CFR Part 60, which are incorporated herein by reference: (i) FEHBP §5.19 corresponding to FAR 52.222-26 – Equal Opportunity (APR 2015) and 41 CFR 60.1.4(a); (ii) FEHBP §5.59 corresponding to FAR 52.222-21 – Prohibition of Segregated Facilities (APR 2015) and 41 CFR 60-1.8; (iii) FEHBP §5.55 corresponding to FAR 52.222-37 – Employment Reports on Veterans (OCT 2015); (iv) FEHBP §5.22 corresponding to FAR 52.222-35 – Equal Opportunity for Veterans (OCT 2015) and 41 CFR 60-300.5(a) and FEHBP §5.23 corresponding to FAR 52.222-36 – Equal Opportunity for Workers with Disabilities (JUL 2014) and 41 CFR 60-741.5(a), which provide



(and are required to be stated in bold print): **“This contractor [KFHP-NW] and subcontractor [Provider, if covered] shall abide by the requirements of 41 CFR 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals on the basis of protected veteran status or disability, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and qualified individuals with disabilities.”** In addition, per FEHBP §§5.19 and 5.61, Executive Order 11246 regarding nondiscrimination in employment decisions, as amended by Executive Order 13665 regarding non-retaliation for disclosure of compensation information, and Executive Order 13496 (codified at 29 CFR Part 471, Appendix A to Subpart A) concerning the obligations of federal contractors and subcontractors to provide notice to employees about their rights under Federal labor laws shall be incorporated herein by reference. As part of KFHP-NW’s efforts to comply with these requirements, KFHP-NW has developed and implemented equal employment opportunity and affirmative action policies and programs designed to ensure that all qualified applicants and employees are treated without regard to such factors as race, color, religion, sex, sexual orientation, gender identify, national origin, disability, veteran status, or any other reason prohibited by law. As one of KFHP-NW’s subcontractors, KFHP-NW requests that Provider take appropriate action, as necessary, to support KFHP-NW’s commitment to these requirements, as required by 41 CFR 60-300.44(f)(1)(ii) and 60-741.44(f)(1)(ii).

In addition, this subsection 9A constitutes notice that Provider may be subject to additional FARs, which are incorporated herein by reference: (a) FEHBP §5.56 corresponding to FAR 52.227-1 – Authorization and Consent (DEC 2007) and FEHBP §5.57 corresponding to FAR 52.227-2 – Notice and Assistance Regarding Patent and Copyright Infringement (DEC 2007); (b) FEBHP §5.69 corresponding to FAR 52.223-18 – Encouraging Contractor Policies to Ban Text Messaging While Driving (AUG 2011); (c) FEHBP §5.64 corresponding to FAR 52.203-13 – Code of Business Ethics and Conduct (OCT 2015); (d) FEHBP §5.5 corresponding to FAR 52.203-7 – Anti-Kickback Procedures (MAY 2004); (e) FEHBP §5.45 corresponding to FAR 52.203-12 – Limitation on Payments to Influence Certain Federal Transactions (OCT 2010); (f) FEHBP §5.70 corresponding to FAR 52.203-17 – Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights (APR 2014); and (g) FEHBP §5.71 corresponding to FAR 52.222-50 – Combatting Trafficking in Persons (MAR 2015).

If Provider is not otherwise subject to compliance with the laws and executive orders specified in this subsection 9A, the inclusion of this subsection 9A shall not be deemed to impose such requirements upon Provider.

**10. Health Information Technology.** [FEHBP contract §1.27] As Provider implements, acquires, or upgrades health information technology systems, it shall use reasonable efforts to utilize, where available, certified health information technology systems and products that meet interoperability standards recognized by the Secretary of Health and Human Services (“Interoperability Standards”), have already been pilot-tested in a variety of live settings, and demonstrate meaningful use of health information technology in accordance with the HITECH ACT. Provider shall also encourage its subcontracted providers to comply with applicable Interoperability Standards.

**11. Licensure and Other Credentials.** [FEHBP contract §1.9(f)] Provider shall require that all physicians providing Services to FEHBP Members comply with KFHP-NW's credentialing requirements.

**EXHIBIT**  
**NATIONAL COMMITTEE FOR QUALITY ASSURANCE (“NCQA”)**  
**REQUIRED PROVISIONS**

This Exhibit is incorporated by reference into and made part of the Agreement with respect to Services rendered to Members of Kaiser Foundation Health Plan of the Northwest (“KFHP-NW”), as required by NCQA. Network shall itself, or shall cause KFHP-NW to, satisfy the obligations of KFHP-NW under this Exhibit. With respect to Members of KFHP-NW, KFHP-NW is the entity ultimately responsible to NCQA.

1. Quality Improvement. Provider shall participate in KFHP-NW’s Quality Improvement (“QI”) program, including cooperating with QI activities, providing applicable performance data, and tracking and regular reporting on mutually agreed upon quality indicators, all in accord with KFHP-NW’s expectations and NCQA standards.
2. Communications with Members. Provider’s physicians and other personnel licensed or certified to provide services to Members hereunder may freely communicate with a Member or a Member’s authorized representatives about the Member’s treatment options, without regard to benefit coverage limitations, while maintaining confidentiality consistent with the confidentiality provisions set forth in this Agreement.
3. Utilization Management Decisions. Utilization management decision-making is based on appropriateness of care and service and existence of coverage. Individuals responsible for utilization management decision-making do not receive financial incentives that specifically reward them for issuing denials of coverage or service, or that encourage decisions that result in underutilization.
4. Credentialing. Provider shall comply, and shall cause its physicians and other personnel to comply, with KFHP-NW’s credentialing requirements. KFHP-NW retains the right, based on quality issues, to approve new practitioners, providers and sites and to terminate or suspend the right of individual practitioners, providers or sites to treat Members.
5. Confidentiality. Provider shall maintain the confidentiality of Member information and records, and all other protected health information, in compliance with the confidentiality provisions set forth in this Agreement and KFHP-NW’s Policies regarding protected health information. Data shared with employers, whether self-insured or insured, shall not implicitly or explicitly identify a Member without the written consent of the Member, except as permitted by law.
6. Site Visits and Medical Records Reviews. Provider shall permit and cooperate with, at reasonable times with reasonable notice, initial and follow-up inspection of its site(s) by representatives of KFHP-NW, Network, NCQA and other accrediting or licensing organizations on a biannual basis or more frequently as requested by KFHP-NW. Provider shall cause all physicians and other personnel to permit and cooperate with such inspections and medical record reviews.
7. Subcontracts. Provider shall require all provisions of this Exhibit to be included in any contract or agreement between Provider and any subcontractor providing services for Members.

## EXHIBIT

### OREGON STATE COMPLIANCE

This Exhibit is incorporated by reference into and made part of the Agreement with respect to Services rendered to Members of Kaiser Foundation Health Plan of the Northwest ("KFHP-NW") under the jurisdiction of the Oregon State Division of Financial Regulation (formerly, Oregon Insurance Division). In the event of a conflict or inconsistency with any term or condition in the Agreement relating to Services rendered to Members of KFHP-NW under the jurisdiction of the Oregon State Division of Financial Regulation, this Exhibit shall control.

Network shall itself, or shall cause KFHP-NW to, satisfy the obligations of KFHP-NW under this Exhibit. With respect to Members of KFHP-NW, KFHP-NW is the entity ultimately responsible for the obligations under this Exhibit.

With respect to Services rendered to Members of KFHP-NW under the jurisdiction of the Oregon State Division of Financial Regulation, the Agreement shall be governed by the laws of the state of Oregon, without application of the conflict of laws provisions of the state of Oregon.

#### Oregon Law

1. **Hold Harmless.** [ORS 750.095(2) and ORS 743B.204] If KFHP-NW or Network fails to pay for Covered Services, the Member is not liable to Provider for any amounts owed by KFHP-NW or Network, and Provider shall not bill or attempt to collect from Members any amounts owed by KFHP-NW or Network.
2. **Annual Accounting.** [ORS 743B.405(2)(c)] No more than once per year upon the request of Provider, KFHP-NW shall deliver to Provider an annual accounting accurately summarizing the financial transactions under the Agreement for that year.
3. **Provider Withdrawal from Patient Care.** [ORS 743B.405(2)(d)] Provider may withdraw from the care of a Member when, in the professional judgment of Provider, it is in the best interest of the Member to do so; provided however that Provider shall give advance notice of withdrawal whenever reasonably feasible to KFHP-NW and shall cooperate with KFHP-NW to facilitate a medically appropriate transfer of care of the Member. Nothing in this paragraph shall relieve Provider of Provider's professional obligations in connection with withdrawal from the care of a patient.
4. **Retention.** [ORS 743B.405(2)(e)] KFHP-NW shall retain a doctor of medicine or osteopathy licensed in Oregon who shall be responsible for all final medical and mental health decisions relating to coverage or payment made pursuant to the Agreement.
5. **No Retaliation.** [ORS 743B.405(2)(f)] A physician who is practicing in conformity with ORS 677.095 may advocate a decision, policy or practice without being subject to termination or penalty under the Agreement for the sole reason of such advocacy.
6. **Assumption of Financial Risk.** [ORS 743B.405(2)(g)] If Provider is paid under the Agreement on a basis that includes financial risk withholds, KFHP-NW shall deliver to Provider a full accounting of health benefits claims data and related financial information on no less than a quarterly basis, as follows: (a) The data shall include all pertinent information relating to the health care services provided, including related provider and patient information,

reimbursements made and amounts withheld under the financial risk withhold provisions of the Agreement for the period of time under reconciliation and settlement between the parties; (b) any reconciliation and settlement undertaken pursuant to the Agreement shall be based directly and exclusively upon data provided to Provider; and (c) all data, including supplemental information or documentation, necessary to finalize the reconciliation and settlement provisions of the Agreement relating to financial risk withholds shall be provided to Provider no later than 30 days prior to finalizing the reconciliation and settlement. Nothing in this section shall prevent KFHP-NW or Provider from mutually agreeing to alternative reconciliation and settlement policies and procedures.

7. **Continuity of Care.** [ORS 743B.405(2)(h)] When continuity of care is required to be provided under a KFHP-NW health benefit plan by ORS 743B.225, KFHP-NW and Provider shall provide continuity of care to Members as provided in ORS 743B.225.

8. **Grievance Procedures.** [ORS 743B.405(2)(a)] KFHP-NW shall provide Provider adequate notice and hearing procedures, or other such procedures as are fair to Provider under the circumstances, in accordance with ORS 743.405(2)(a), prior to termination or non-renewal of the Agreement when such termination or renewal is based upon issues relating to the quality of patient care rendered by Provider.

9. **Contract Termination.** [ORS 743B.405(2)(b)] The criteria for termination or nonrenewal of the Agreement are set forth in Sections 5.2, 5.3, and 5.4 of the Agreement.

10. **Refunds of Paid Claims.** [ORS 743B.451] Notwithstanding anything to the contrary in the Agreement, except in case of fraud or abuse of billing, a request for refund of a payment previously made to Provider shall be made in writing within 18 months (unless a shorter time period is specified in Section 4.8 of the Agreement), or if for reasons relating to coordination of benefits within 30 months, after payment was made, and shall specify why the applicable Payer believes the refund is owed. If the refund is claimed for reasons relating to coordination of benefits, Payer will include in the written request the name and mailing address of the other insurer or entity that has primary responsibility for payment of the claim. If a request for a refund is not disputed in writing within 30 days after the request is received, the Provider must pay the refund within 60 days after receiving the request. If a request for a refund is disputed in writing within 30 days after the request is received, KFHP-NW shall not request that such disputed refund be paid earlier than six months after the request for a refund was received. Notwithstanding the foregoing, Payer may request a refund of a claim previously paid at any time if liability is imposed by law on a third party and Payer is unable to recover from the third party because the third party has paid or will pay Provider for the services covered by the claim.

#### **Patient Protection and Affordable Care Act – Federally Facilitated Marketplace**

In providing and/or arranging certain professional medical services, KFHP-NW is a Qualified Health Plan (“QHP”) issuer that is certified and contracted to offer QHPs on the State-Based Exchange that is using the Federally-facilitated Marketplace technology platform (hereafter “FFM”) in Oregon. As a QHP issuer, KFHP-NW is subject to certain statutory and regulatory requirements under the Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152) (hereafter “ACA”), including but not limited to the requirements stated in 45 C.F.R.

§156.340 (hereafter "**Regulation**") governing KFHP-NW's arrangement with contractors, such as Provider, providing health care and/or administrative services to Members who are enrolled in a QHP through the FFM (hereafter "**FFM Members**"). By virtue of the Agreement, Provider acts as a downstream entity or delegated entity (as those terms are defined in 45 C.F.R. §156.10) to KFHP-NW within the scope of the Regulation and is subject to the following provisions required by the Regulation:

1. As a downstream entity or delegated entity, as applicable, Provider shall comply with all applicable ACA standards including but not limited to the requirements set forth in the Regulation, statute, other regulations and/or subregulatory guidance issued by CMS that, with respect to KFHP-NW's QHPs offered through the FFM and the FFM Members enrolled in such QHPs, (a) are relevant to Provider's performance of its duties and obligations under the Agreement and (b) any reporting responsibilities regarding such duties and obligations (collectively hereafter "**Activities**").
2. Provider's Activities are those stated in the Agreement and Provider shall perform the Activities in accordance with the standards of the Regulation including but not limited to those pertaining to maintenance of records and compliance reviews (as set forth in §§156.705 and 156.715 of Title 45 of the Code of Federal Regulations, respectively).
3. Provider agrees that, notwithstanding any terms and conditions pertaining to audits and/or termination of the Agreement for cause including but not limited to any right to cure any breach(es) of the Agreement, the Agreement will terminate for cause with respect to KFHP-NW's QHPs offered through the FFM and the FFM Members enrolled therein if the U.S. Department of Health and Human Services (hereafter "**HHS**") and/or KFHP-NW determine that Provider has not performed satisfactorily.
4. Notwithstanding any provisions of the Agreement related to audit and/or access to records, premises or the like, Provider agrees to permit access by the Secretary of, and the Office of the Inspector General of, HHS or their designees in connection with their right to evaluate through audit, inspection, or other means, Provider's books, contracts, computers, or other electronic systems, including medical records and documentation, relating to KFHP-NW's obligations and responsibilities under the Regulation until ten (10) years after the final date of Provider's performance of the Activities.

**EXHIBIT**  
**OREGON STATE MEDICAID PROGRAM COMPLIANCE**  
**(Multnomah, Clackamas and Washington Counties)**

Kaiser Foundation Health Plan of the Northwest (“KFHP-NW”), has entered into a Risk Accepting Entity Participation Agreement (the “Participation Agreement”), with Health Share of Oregon (formerly known as Tri-County Medicaid Collaborative), an Oregon nonprofit corporation (“Health Share”) serving Multnomah, Clackamas and Washington counties. Health Share has entered into a Health Plan Services Contract, Coordinated Care Organization Contract (as the same may be updated, amended, modified or supplemented from time to time, the “Core Contract”) with the State of Oregon, acting by and through its Oregon Health Authority (“OHA”), pursuant to which Health Share acts as a Coordinated Care Organization. The Core Contract and the Participation Agreement require that the provisions in this Exhibit be included in any subcontracts with respect to goods and services rendered under those agreements. This Exhibit is incorporated by reference into and made part of the Agreement with respect to products provided and services rendered under the Agreement by Provider to enrollees of the Oregon Health Plan (“OHP”) Medicaid managed care program (“Medicaid Members”). In the event of a conflict or inconsistency with any term or condition in the Agreement relating to goods and services rendered to Medicaid Members, this Exhibit shall control.

Provider shall comply with the provisions in this Exhibit to the extent that they are applicable to the goods and services provided by Provider under the Agreement. Capitalized terms used in this Exhibit but not otherwise defined in the Agreement shall have the same meaning as those terms in the Participation Agreement, including definitions incorporated therein by reference.

**1. Applicable Provisions from Core Contract or Participation Agreement.** [Participation Agreement VI; Ex. D §§ 18(a)(4), 20(b)] The Agreement is subject to, and shall be interpreted and administered in accordance with, the terms and conditions of the Core Contract and the Participation Agreement. If any provision in the Core Contract or the Participation Agreement applies to the Agreement (each, an “Applicable Provision”), KFHP-NW and Provider agree to abide by the Applicable Provision as the Core Contract or the Participation Agreement, as applicable, intended for the Applicable Provision to apply to the Agreement. In the event of a conflict between an Applicable Provision and a provision in the Agreement, the Applicable Provision shall control. KFHP-NW and Provider agree to cooperate in good faith and take best efforts to amend the Agreement (a) to comply with an Applicable Provision, if any provision in the Agreement conflicts with such Applicable Provision, and (b) to set forth the Applicable Provision in the Agreement as the Core Contract or Participation Agreement, as applicable, intended for the Applicable Provision to apply to the Agreement, if the Applicable Provision is not set forth in the Agreement or if the Agreement does not address the Applicable Provision as intended by the Core Contract or Participation Agreement. If the Participation Agreement is amended or modified, then, upon the direction of Health Share, KFHP-NW and Provider agree to cooperate in good faith and take best efforts to amend the Agreement within 30 calendar days to be consistent with such amendments or modifications.

**2. Termination for Cause.** [Core Contract Ex. B, Pt 4, § 10(a)(8)(a); Participation Agreement Ex. B, Pt 4, § 10, Ex. D, §§ 10, 18(b)(7)] In addition to pursuing any other remedies allowed at law or in equity or by the Agreement, the Agreement may be terminated by KFHP-

NW, or KFHP-NW may impose other sanctions against Provider, if Provider's qualifications or performance are inadequate to meet the requirements of the Core Contract or the Participation Agreement.

3. **Federal Medicaid Managed Care.** [Core Contract Ex. B, Pt 4, § 10(a)(8)(b); Participation Agreement Ex. B, Pt 4, § 10] Provider shall comply with the requirements of 42 CFR § 438.6 that are applicable to the Work required under the Agreement.

4. **Billing and Payment.** [Core Contract Ex. B, Pt 4, § 10(a)(4); Participation Agreement Ex. B, Pt 4, § 10; Participation Agreement Ex. D, § 18(a) and (b)(2); Group Provider Agreement § 5.3.4; OAR 410-120-1280(3)(c)] Provider shall, and shall require all Sub-Subcontractors to, look solely to KFHP-NW for payment for Covered Services rendered to Medicaid Members. Provider shall not bill Medicaid Members for services that are not covered under the Core Contract unless there is a full written disclosure or waiver on file signed by the Medicaid Member, in advance of the service being provided, in accordance with OAR 410-141-0420. Provider shall, and shall require all Sub-Subcontractors to, comply with the provisions of the Participation Agreement related to billing Medicaid Members. Provider shall not, and Provider shall require all Sub-Subcontractors to not, bill Medicaid Members for missed appointments.

5. **Access to Records.** [Core Contract Ex. D, §§ 13, 18; Participation Agreement Ex. D, § 13; OAR 410-141-3180; 42 CFR § 434.6(5)] Provider shall, and shall require each Sub-Subcontractor to, maintain all financial records related to the Core Contract, the Participation Agreement, or the Agreement in accordance with generally accepted accounting principles or National Association of Insurance Commissioners accounting standards. In addition, Provider shall, and shall require each Sub-Subcontractor to, maintain any other records, books, documents, papers, plans, records of shipment and payments, and writings of Provider, whether in paper, electronic or other form, that are pertinent to the Core Contract (the "Records") in such a manner to clearly document Provider's performance or Sub-Subcontractor's performance, as applicable. Provider shall, and shall require each Sub-Subcontractor to, provide timely and reasonable access to Records to (a) OHA; (b) the Secretary of State's Office; (c) CMS; (d) the Comptroller General of the United States; (e) the Oregon Department of Justice Medicaid Fraud Control Unit; (f) other authorized state or federal reviewers; and (g) all duly authorized representatives of any of the foregoing (the "Reviewers"), to perform examinations and audits, make excerpts and transcripts, and evaluate the quality, appropriateness and timeliness of services performed. Provider shall, and shall require each Sub-Subcontractor to, cooperate with the Reviewers for audits, inspection and examination of Medicaid Members' clinical records. Provider's and Sub-Subcontractor's documentation must be sufficiently complete and accurate to permit evaluation and confirmation that coordinated care services were authorized and provided, referrals made, and outcomes of coordinated care and referrals sufficient to meet professional standards applicable to the health care professional and meet the requirements for health oversight and outcome reporting in the Oregon Administrative Rules. Provider shall, and shall require each Sub-Subcontractor to, upon request and without charge, provide a suitable work area and copying capabilities to facilitate such a review or audit. This right also includes timely and reasonable access to Provider's and Sub-Subcontractor's personnel for the purpose of interview and discussion related to such documents. Provider shall, and shall require each Sub-Subcontractor to, retain and keep accessible all Records, including Medicaid Members' clinical records, for the longer of (a) seven years following final payment and termination of the Core



Contract or the date of services for which claims are made, whichever is later (or, if an audit, litigation, research and evaluation, or other action involving the records is started before the end of the seven-year period, until all issues arising out of the action are resolved); (b) the period as may be required by applicable law, including the records retention schedules set forth in OAR Chapters 410 and 166; or (c) until the conclusion of any audit, controversy or litigation arising out of or related to the Core Contract or the Records. The rights of access in this Section 5 are not limited to the required retention period, but shall last as long as the Records are retained.

6. **Information Privacy/Security/Access.** [Core Contract Ex. D, §§ 14, 18; Participation Agreement Ex. D, § 14] If the items or services provided under the Agreement permit Provider or any Sub-Subcontractor to have access to or use of any OHA computer system or other OHA Information Asset for which OHA imposes security requirements, and OHA grants Provider or Sub-Subcontractor access to such OHA Information Assets or Network and Information Systems, Provider shall, and shall require each Sub-Subcontractor to, comply with OAR 943-014-0300 through OAR 943-014-0320, as such rules may be revised from time to time.

7. **Governing Law, Consent to Jurisdiction.** [Core Contract Ex. D, §§ 1, 18; Participation Agreement Ex. D, § 1] The Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding between (i) the OHA (or any other agency or department of the State of Oregon) and Provider or (ii) the OHA (or any other agency or department of the State of Oregon) and any Sub-Subcontractor that arises from or relates to the Agreement shall be brought and conducted solely and exclusively within the Circuit Court of the County where the claim arises or relates; provided, that if a claim must be brought in a federal forum, then it shall be conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this Section 7 be construed as a waiver of the State of Oregon of the jurisdiction of any court or of any form of defense to or immunity from any claim whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise. Any claim, action, suit or proceeding that arises from or relates to the Participation Agreement shall be brought and conducted solely and exclusively within the Circuit Court of the County where the claim arises or relates; provided, that if a claim must be brought in a federal forum, then it shall be conducted solely and exclusively within the United States District Court for the District of Oregon. **PROVIDER, BY EXECUTION OF THE AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.** Provider shall cause all Sub-Subcontractors under the Agreement to comply with the requirements of this Section 7.

8. **Independent Contractor.** [Core Contract Ex. D, §§ 3, 18; Participation Agreement Ex. D, § 3(b)] Provider agrees that it shall be subject to the "Independent Contractor" provisions that apply to "Contractor" with respect to work performed under contract or subcontract for the State of Oregon or the federal government as stated in the Core Contract, Exhibit D, Section 3, which shall be incorporated herein by reference.

9. **Compliance with Applicable State and Local Law.** [Core Contract Ex. D, §§ 2(a), 18; Participation Agreement Ex. D, §§ 2, 30] Provider shall, and shall cause all Sub-Subcontractors to, comply with all State and local laws, rules, regulations, executive orders, and ordinances (as they may be adopted, amended or repealed from time to time) applicable to the Core Contract,

the Participation Agreement, the Agreement or to the performance of Work under any of the foregoing, including, but not limited to, the following: (a) ORS Chapter 659A.142; (b) all other applicable requirements of State civil rights and rehabilitation statutes, rules and regulations; (c) OHA rules pertaining to the provision of prepaid capitated health care and services, OAR Chapter 410, Division 141; (d) all other OHA rules in OAR Chapter 410; (e) rules in OAR Chapter 309 pertaining to the provisions of mental health services; (f) rules in OAR Chapter 415 pertaining to the provision of Substance Use Disorders services; (g) state law establishing requirements for Declaration for Mental Health Treatment in ORS 127.700 through 127.737; and (h) all protective services, investigation and reporting requirements described in OAR 943-045-0250 through 943-045-0370; ORS 430.735 through 430.765; ORS 124.005 through 124.040; and ORS 441.650 through 441.680. These laws, rules, regulations, executive orders and ordinances are incorporated by reference herein to the extent that they are applicable to the Core Contract, the Participation Agreement or the Agreement and required by law to be so incorporated. Provider shall, and shall require each Sub-Subcontractor to, to the maximum extent economically feasible in the performance of the Agreement pertinent to the OHP Contract, use recycled paper (as defined in ORS 279A.010(1)(gg)), recycled PETE products (as defined in ORS 279A.010(1)(hh)), and other recycled products (as "recycled products" is defined in ORS 279A.010(1)(ii)).

10. **Americans with Disabilities Act.** [Core Contract Ex. D, §§ 2(b), 18; Participation Agreement Ex. D, § 2] In compliance with the Americans with Disabilities Act, any written material that is generated and provided by Provider under the Core Contract, the Participation Agreement, or the Agreement to Medicaid Members, including Medicaid-Eligible Individuals, shall, at the request of such individuals, be reproduced in alternative formats of communication, to include Braille, large print, audiotape, oral presentation, and electronic format. Provider shall not be reimbursed for costs incurred in complying with this provision. Provider shall cause all Sub-Subcontractors to comply with the requirements of this provision as if each Sub-Subcontractor was Provider under this provision.

11. **Representations and Warranties.** [Core Contract Ex. D, §§ 4, 18; Participation Agreement Ex. D, § 4] The representations and warranties set forth in this Section 11 are in addition to, and not in lieu of, any other representations or warranties provided under the Agreement. Provider represents and warrants to KFHP-NW and OHA that (a) Provider has the power and authority to enter into and perform the Agreement; (b) the Agreement, when executed and delivered, shall be a valid and binding obligation of Provider enforceable in accordance with its terms; (c) Provider has the skill and knowledge possessed by well-informed members of its industry, trade or profession and Provider will apply that skill and knowledge with care and diligence to perform the Work in a professional manner and in accordance with standards prevalent in Provider's industry, trade or profession; (d) Provider shall, at all times during the term of the Agreement, be qualified, professionally competent, and duly licensed to perform the Work; and (e) Provider prepared its application related to the Agreement, if any, independent from all other applicants, and without collusion, fraud or other dishonesty. Provider covenants to immediately notify KFHP-NW if any of the foregoing representations or warranties becomes untrue after the effective date of the Agreement. Provider shall cause all Sub-Subcontractors to (i) make the representations and warranties of this Section 11 to KFHP-NW and OHA as if each Sub-Subcontractor was Provider under this Section 11, and (ii)

covenant to notify KFHP-NW if any of the foregoing representations or warranties becomes untrue with respect to such Sub-Subcontractor after the effective date of the subcontract.

12. **Assignment; Successor in Interest.** [Core Contract Ex. D, §§ 17, 18; Participation Agreement Ex. D, § 17] Provider shall not assign or transfer its interest in the Agreement, voluntarily or involuntarily, whether by merger, consolidation, dissolution, operation of law, or in any other matter, without prior written consent of KFHP-NW and OHA. Any such assignment or transfer, if approved, is subject to such conditions and provisions as KFHP-NW or OHA may deem necessary, including, but not limited to, Exhibit B, Part 8, Section 14 of the Core Contract. No approval by KFHP-NW or OHA of any assignment or transfer of interest shall be deemed to create any obligation of KFHP-NW or OHA in addition to those, if any, set forth in the Agreement. The provisions of the Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. Provider shall cause all Sub-Subcontractors to comply with the requirements of this Section 12 as if each Sub-Subcontractor was Provider under this Section 12.

13. **Severability.** [Core Contract Ex. D, §§ 22, 18] If any term or provision of the Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be unlawful.

14. **Subcontracts.** [Core Contract Ex. D, § 18; Participation Agreement Ex. B, Pt 4, § 10; Participation Agreement Ex. D, § 18]

a. *In General.* Where Provider is permitted to subcontract certain functions of the Agreement, Provider shall notify KFHP-NW, in writing, prior to subcontracting such work. Provider shall ensure that all subcontracts are (i) in writing; (ii) include all the requirements set forth in the Agreement that are applicable to the service or activity delegated under the subcontract; and (iii) are available for inspection upon request by KFHP-NW. In addition, Provider shall subcontract in accordance with Exhibit D, Section 18 of the Participation Agreement and Exhibit B, Part 4, Section 10.a.(3) through 10.a.(9) of the Core Contract. Provider shall expressly assume the duties and obligations applicable to KFHP-NW as described in Exhibit B, Part 4, Sections 10.a.(3) through 10.a.(9) of the Core Contract. KFHP-NW's consent to any subcontract shall not relieve Provider of any of its duties or obligations under the Agreement. Provider shall comply with the requirements of Exhibit B, Part 8, Section 14 of the Core Contract as if Provider was KFHP-NW under that section.

b. *Miscellaneous.*

i. Provider shall participate in Health Share's quality initiatives described in Exhibit B, Part 9 of the Participation Agreement.

ii. Provider shall provide Covered Services to Medicaid Members for the period in which Health Share paid KFHP-NW for such services.

iii. The term of the Agreement shall be not less than one year, subject to the termination provisions as may be set forth in the Agreement (including this Exhibit).

iv. Provider shall carry insurance as required by Health Share or KFHP-NW and shall provide proof of insurance to Health Share or KFHP-NW upon request.

v. Each subcontract that Provider enters into shall set forth provisions consistent with Exhibit D, Section 10 of the Participation Agreement and Section 2 of this Exhibit and pertaining to the termination of the Participation Agreement, the Agreement or the subcontract between Provider and Sub-Subcontractor.

15. **Compliance with Applicable Federal Laws.** [Core Contract Ex. D, §§ 2(c), 18; Participation Agreement Ex. D, § 2] Provider shall comply, and shall cause each Sub-Subcontractor to comply, with federal laws as set forth or incorporated, or both, in the Core Contract, the Participating Agreement and the Agreement, including, without limitation, all applicable standards, policies, orders, or requirements that apply to KFHP-NW as stated in the Core Contract, Exhibit E, and all other federal laws applicable to Provider's performance relating to the Core Contract, the Participation Agreement, or the Agreement. For purposes of the Core Contract, the Participation Agreement, or the Agreement, all references to federal laws are references to federal laws as they may be adopted or amended from time to time.

16. **Payment Types and Rates.** [Participation Agreement Ex. C, § 1(c)] If Provider is a designated Type A, Type B, or Rural critical access hospital, Provider represents and warrants to Health Share (i) that the Agreement establishes the total reimbursement for the services provided to the persons whose medical assistance benefits are administered by KFHP-NW and (ii) Provider is not entitled to any additional reimbursement from OHA for services provided to persons whose medical assistance benefits are administered by KFHP-NW.

17. **All Payers All Claims Reporting Program.** [Participation Agreement Ex. B, Pt 8, § 13; Core Contract Ex. B, Part 4, § 10(a)(8)(c)] Provider shall cooperate and assist KFHP-NW in its participation in the All Payers All Claims reporting system established under ORS 442.464 and 442.466.

18. **Prevention / Detection of Fraud and Abuse.** [Participation Agreement Ex. B, Pt 8, § 14; Core Contract Ex. B, Part 4, § 10(a)(8)(c)] Provider shall comply with all fraud and abuse prevention and detection requirements as set forth in Participation Agreement Ex. B, Part 8, Section 14, as such requirements are communicated to Provider by KFHP-NW.

19. **Valid Claims.** [Core Contract Ex. B, Part 4, § 10(a)(8)(d); Participation Agreement Ex. B, Part 4, § 10] Provider shall submit Valid Claims for services including all the fields and information needed to allow the claim to be processed without further information from Provider or Sub-Subcontractors, and within time frames that assure all corrections have been made within four months of the Date of Service. Provider and its Sub-Subcontractors may, by mutual agreement establish an alternative payment schedule not to exceed the minimum requirements.

## EXHIBIT

### OREGON OEBB AND PEBB REQUIREMENTS

This Exhibit is incorporated by reference into and made a part of the Agreement with respect to Services rendered to Members of Kaiser Foundation Health Plan of the Northwest (“KFHP-NW”) under the jurisdiction of the State of Oregon, acting by and through its Oregon Educators Benefit Board (“OEBB”) and its Public Employees’ Benefit Board (“PEBB”). In the event of a conflict or inconsistency with any term or condition in the Agreement relating to Services rendered to Members of KFHP-NW under the jurisdiction of the OEBB or the PEBB (“OEBB Members” and “PEBB Members,” respectively), this Exhibit shall control.

Network shall itself, or shall cause KFHP-NW to, satisfy the obligations of KFHP-NW under this Exhibit. With respect to Members of KFHP-NW, KFHP-NW is the entity ultimately responsible for the obligations under this Exhibit.

**OEBB and PEBB.** The following provisions apply with respect to Services rendered to Members of KFHP-NW under the jurisdiction of either the OEBB or the PEBB.

1. **Quality Guidelines.** Provider shall cooperate with KFHP-NW with respect to KFHP-NW’s adoption of clinical guidelines in collaboration with the Oregon Healthcare Quality Corporation (“OHQC”) and the Oregon Health Authority (“OHA”) Health Evidence Review Commission (“HERC”), as mutually agreed to by KFHP-NW and OEBB or PEBB (with respect to OEBB and PEBB Members), or KFHP-NW’s use of other guidelines that closely align with them (with respect to OEBB Members). [OEBB Exh. E, Part VI, Sec. 2, and Exh. I, Sec. 3, 3-b; PEBB Exh. B, Sec. VIII.e.]
2. **Administrative Simplification.** Provider shall make best efforts to, with respect to OEBB Members, and shall take reasonable steps to, with respect to PEBB Members, conduct all administrative transactions electronically, in accordance with standards promulgated or adopted from time to time by the federal Department of Health and Human Services, the Oregon Health Authority, and the uniform standards adopted by the Oregon Department of Consumer and Business Services. [OEBB Exh. E, Part VI, Sec. 9; PEBB Exh. B, Sec. X.b.3.]
3. **Non-Payment for HACs.** If Provider is a hospital, Provider shall not charge KFHP-NW or a Member for hospital-acquired conditions (“HACs”) as identified by Medicare regulations (with respect to PEBB Members) or Medicare guidelines as identified at <http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/HospitalAcqCond/index.html>, as updated by CMS from time to time (with respect to OEBB Members). [OEBB Exh. E, Part VI, Sec. 7.b.1; PEBB Exh. B, Sec. VIII.c.1.]
4. **Serious Adverse Events: Guidelines for Non-Payment.** If Provider is a hospital (with respect to both OEBB and PEBB Members) or an applicable provider, ambulatory surgical center (“ASC”) or facility (with respect to PEBB Members), Provider shall make best efforts to adopt the “Guidelines for Non-Payment of Serious Adverse Events” developed by the Oregon Association of Hospitals and Health Systems (or similar guidelines for providers outside Oregon). [OEBB Exh. E, Part VI, Sec. 7.b.4; PEBB Exh. B, Sec. VIII.c.2.]
5. **Serious Adverse Events: Reporting.** If Provider is a hospital (with respect to both OEBB and PEBB Members) or an ASC, nursing facility or retail pharmacy (with respect to

OEBB Members), Provider shall make best efforts to participate in the applicable Oregon Patient Safety Commission's Adverse Events Reporting Program (or similar program if Provider is located outside of Oregon). If Provider is a hospital (with respect to OEBB Members), Provider also shall cooperate with KFHP-NW in working collaboratively with the Oregon Patient Safety Commission and others to advance patient safety. [OEBB Exh. E, Part VI, Sec. 7.b.2 and 7.d; PEBB Exh. B, Sec. VIII.c.3.]

a. With respect to OEBB Members, if Provider is an ASC, nursing facility or retail pharmacy, Provider shall make best efforts to meet or exceed the quantity targets and at least one of the targets for quality or timeliness for the Oregon Patient Safety Commission's Adverse Events Reporting Program. [OEBB Exh. E, Part VI, Sec. 7.e.]

b. With respect to OEBB Members, if Provider is an ASC, nursing facility or retail pharmacy, Provider shall make best efforts to provide timely written notification to patients and families when a serious adverse event occurs (in accordance with ORS 442.837). [OEBB Exh. E, Part VI, Sec. 7.f.]

6. **Surgical Checklist.** If Provider is a hospital (with respect to OEBB and PEBB Members) or an applicable provider, ASC or facility (with respect to PEBB Members), Provider shall make best efforts to use a surgical checklist that is consistent with the Oregon Surgical Safety Checklist (or similar checklist for providers outside Oregon) and that shall include critical elements appropriate to the patient population. With respect to OEBB Members, the checklist shall require full communication among the surgical staff regarding patient needs in the following three phases of care: prior to administration of anesthesia; prior to the first surgical incision; and prior to the patient leaving the operating room. [OEBB Exh. E, Part VI, Sec. 7.b.3; PEBB Exh. B, Sec. VIII.c.4.]

**OEBB.** The following additional provisions apply only with respect to Services rendered to Members of KFHP-NW under the jurisdiction of the OEBB.

1. **Meaningful Use of Electronic Medical Records; Health Information Exchange.** Provider shall make reasonable efforts to adopt and demonstrate the use of certified Electronic Medical Records. [OEBB Exh. E, Part VI, Sec. 5.]

2. **Leap Frog.** If Provider is a hospital, Provider shall make best efforts to participate in the Leap Frog Hospital Survey. [OEBB Exh. E, Part VI, Sec. 3; Exh. I, Sec. 3, 3-b.]

3. **"Baby Friendly" Certification.** If Provider is a birthing hospital, it shall make best efforts to pursue "Baby Friendly" Certification. [OEBB Exh. E, Part VI, Sec. 12.]

February 27, 2020

Board of County Commissioners  
 Clackamas County

Members of the Board:

**Approval for Agreement #9647 to a Cooperative Agreement with Oregon Health and Science University (OHSU), for partnership in an Institutional Review Board (IRB) study.**

<b>Purpose/Outcomes</b>	Provides Clackamas Health Centers (CHC) acceptance for participation in an IRB focused study on opioid treatments in Criminal Justice System (CJS) involved adults.
<b>Dollar Amount and Fiscal Impact</b>	There are no monies involved. No County General Funds are involved. No matching funds required.
<b>Funding Source</b>	Oregon Health and Science University (OHSU)
<b>Duration</b>	Effective upon signature and no expiration until study concluded.
<b>Previous Board Action</b>	No previous Board action.
<b>Strategic Plan Alignment</b>	1. Individuals and families in need are healthy and safe 2. Ensure Safe, healthy and secure communities
<b>Counsel Review</b>	County Counsel has reviewed and approved this document. It was approved on February 13, 2020.
<b>Contact Person</b>	Deborah Cockrell 503-742-5495
<b>Contract No.</b>	9647

**BACKGROUND:**

Clackamas Health Centers (CHC) of the Health, Housing and Human Services Department requests the approval of Agreement #9647 to a Cooperative agreement with OHSU for the purpose of participating in an IRB study focused on opioid addictions.

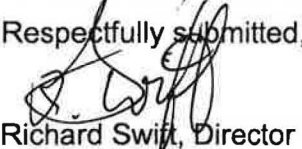
The National Institutes of Health will award grants from the Justice Community Opioid Innovation Network (JCOIN) to support research on quality addiction treatment for opioid use disorder (OUD) in criminal justice settings nationwide. OHSU will be a part of the JCOIN network and sponsor CHC as a participant in this study. OHSU will be accessing CHC patients currently incarcerated with the Corrections Department.

This is a partnership contract for CHC. The total amount of the agreement is none because CHC's participation will be as a case-study partner providing data to OHSU. No County General Funds are involved. The Agreement is effective upon signature and will continue until the study is terminated.

**RECOMMENDATION:**

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

Respectfully submitted,



Richard Swift, Director  
 Health, Housing, and Human Services

**Institutional Review Board (IRB)  
Authorization Agreement  
#9647 (CCHC Contract #)**



OREGON  
**HEALTH & SCIENCE**  
UNIVERSITY

**Research Integrity Office**

Mail code L106-RI

3181 S.W. Sam Jackson Park Road

Portland, Oregon 97239-3098

tel: 503 494-7887 | fax: 503 346-6808

*Use this form when OHSU is providing IRB oversight for another institution.*

**Name of Institution Providing IRB Review:**

**Oregon Health and Science University (OHSU)**

IRB Registration #: **IRB00000471**

Federalwide Assurance (FWA) #: **FWA00000161**

**Name of Institution Relying on the OHSU IRB:**

**Clackamas County Health Center**

FWA #, if applicable: **FWA00029258**

The Officials signing below agree that Clackamas County Health Center may rely on OHSU for review and continuing oversight of its human subjects research described below: (check one)

This agreement is limited to the following specific protocol:

OHSU eIRB #: **00020836**

Name of Research Project: **Justice Community Opioid Innovation Network (JCOIN): Long-acting buprenorphine vs. naltrexone opioid treatments in CJS-involved adults**

Name of Principal Investigator: **Elizabeth Waddell, PhD**

Sponsor or Funding Agency: **NIDA** Award Number, if any: \_\_\_\_\_

This agreement covers all research in which Clackamas County Health Center is engaged.\*

Other (describe): \_\_\_\_\_

OHSU will provide IRB review for the above-specified research in accordance with the Terms of Authorization detailed on the remaining pages of this Agreement. Clackamas County Health Center agrees to abide by the Terms of Authorization and all applicable OHSU Policies and Procedures. This Agreement is effective the date of the last signature indicated below and remains in effect until terminated. Either party may terminate this agreement by providing 30 days written notice to the other party. If the Agreement pertains to a specific research protocol, the Agreement automatically terminates upon termination of the study in the OHSU eIRB system. This Agreement must be kept on file by both parties and provided to OHRP upon request.

**Signature of Signatory Official for OHSU:**

Print Full Name: \_\_\_\_\_ Institutional Title: \_\_\_\_\_ Date: \_\_\_\_\_

**Signature of Signatory Official for Relying Institution:**

Print Full Name: \_\_\_\_\_ Institutional Title: \_\_\_\_\_ Date: \_\_\_\_\_



\* Engagement in research is defined by the 2008 OHRP Guidance Document available at <http://www.hhs.gov/ohrp/policy/engage08.html>.

## OHSU IRB Terms of Authorization

- I. **Compliance with Federal Laws and Regulations.** Both parties agree to adhere to all pertinent Federal laws and regulations involving the protection of human subjects in research, including 45 CFR 46, 21 CFR 50 and 56, and others as applicable.
- II. **Federal-Wide Assurance (FWA).** The relying institution will maintain an FWA as required for DHHS-supported research and will abide by its terms. The oversight provided by the OHSU IRB per this Agreement will satisfy the terms of the relying institution's FWA, if applicable. The OHSU IRB will not review research on behalf of institutions collaborating with the relying institution unless applicable FWA requirements are satisfied.
- III. **IRB Membership and Registration.** The OHSU IRB is registered with OHRP in accordance with 45 CFR 46, Subpart E, and satisfies the criteria for membership designated in 45 CFR 46.107 and 21 CFR 56.107. Current and past member rosters and registration information are publicly available on the OHSU IRB website.
- IV. **IRB Review.** The OHSU IRB will provide IRB oversight in compliance with 45 CFR 46 and 21 CFR 50 and 56 for the research specified on Page 1 of this Agreement.
  - This includes initial review, continuing review at intervals not to exceed once per year, and review of proposed changes in the research.
  - Project submission, review, approval, and communication of IRB determinations will take place according to OHSU IRB Policies and Procedures, which are publicly available on the OHSU IRB website.
  - The OHSU IRB will review requests for waivers or alterations of authorization under the HIPAA Privacy Rule (45 CFR 164.512) as well as authorization language that is included in the consent form. Upon the request of the relying institution, the OHSU IRB will also review standalone authorization documents associated with the research.
  - Minutes of relevant IRB meetings will be made available to the relying institution's Signatory Official, designated Local Contact Person, or other designee upon written request. Per OHSU IRB policy, minutes are considered confidential.
- V. **Reportable Events.** The relying institution is responsible for reporting Unanticipated Problems, Protocol Deviations, complaints, and other non-compliance to the OHSU IRB as required by OHSU IRB Policies and Procedures.
  - The OHSU IRB will review reported events in accordance with federal regulations and OHSU Policies and Procedures to determine corrective actions and whether the event requires further reporting.
  - If a complaint from a subject or other person regarding the research or the IRB review process is received, the parties will communicate the concern and work together to determine next steps.
  - When investigation into a particular incident or situation is warranted, the parties will work together to thoroughly evaluate the situation and determine next steps. The parties agree to provide each other with reasonable access to documents and information relevant to the investigation.
  - The OHSU IRB will follow written procedures for reporting unanticipated problems involving risks to subjects or others, serious and/or continuing non-compliance, and suspension or termination of research to the appropriate federal officials, the sponsor or funding agency if applicable, and institutional officials at both OHSU and the relying institution. The relying institution may request to review and/or revise the report before submission and may choose to submit its own additional report.

## VI. Responsibilities of Relying Institution:

- ***Institutional oversight of research activities.***
  - Ensure compliance with all determinations and requirements of the OHSU IRB.
  - Ensure safe and appropriate conduct of the research at the relying institution. This includes, but is not limited to, monitoring study compliance and reporting events as specified in this Agreement.
  - Perform any ancillary reviews required by the institution and provide the OHSU IRB with any requirements or results of such reviews that are relevant to the OHSU IRB's review of the research.
  - Require the PI at the relying institution to maintain appropriate documentation of IRB approvals and other OHSU IRB correspondence.
  - Ensure compliance with all applicable requirements of the HIPAA Privacy Rule pertaining to uses and disclosures of PHI by the relying institution.
  - Ensure that all personnel involved in conducting the research at the relying institution are appropriately qualified to conduct human subjects research, and provide evidence of such qualification in accordance with OHSU IRB Policies and Procedures.
  - Ensure that researcher conflicts of interest are disclosed and managed in a manner consistent with federal regulations and OHSU Policies and Procedures.
- ***Facilitating review by the OHSU IRB.***
  - Provide the OHSU IRB with any relevant information regarding local context, including, but not limited to, state and local laws and regulations, local community information, and institutionally required consent form language. The OHSU IRB will rely on this information in performing its review.
  - Provide OHSU IRB staff with the current name and contact information of at least one Local Contact Person who has the authority to communicate for the IRB at the relying institution. This individual will be the OHSU IRB's main contact person for all necessary communication with the relying institution.
  - Notify OHSU IRB staff immediately if there is a suspension or restriction of a Principal Investigator (PI) conducting the research, a change in the status of the relying institution's FWA, or any other change that affects the OHSU IRB's review of research under this Agreement.

**COPY**

February 27, 2020

Board of Commissioners  
Clackamas County

Members of the Board:

**Approval to Apply for a Capital Grant for Federal Transit Administration  
Bus and Bus Infrastructure Investment Program Funds through Oregon Department  
of Transportation for Mt Hood Express Vehicle Replacements**

<b>Purpose/Outcomes</b>	Agreement with Oregon Department of Transportation to provide funding for the purchase of three buses for the Mt Hood Express.
<b>Dollar Amount and Fiscal Impact</b>	The maximum grant award is \$460,000. The contract is funded through the Oregon Department of Transportation.
<b>Funding Source</b>	FTA 5339- Bus and Bus Infrastructure Investment Program funds- no County General Funds are involved.
<b>Duration</b>	N/A- one time capital purchase
<b>Previous Board Action</b>	None
<b>County Counsel</b>	N/A
<b>Strategic Plan Alignment</b>	1. This funding aligns with the strategic priority to increase self-sufficiency for our clients. 2. This funding aligns with the strategic priority to ensure safe, healthy and secure communities by addressing transportation needs for seniors, persons with disabilities and low income job seekers.
<b>Contact Person</b>	Brenda Durbin, Director, Social Services Division 503-655-8641
<b>Contract No.</b>	N/A

The Social Services Division of the Health, Housing, and Human Services Department requests approval to apply for a capital purchases grant for Federal Transit Administration Bus and Bus Infrastructure Investment Program funds through the Oregon Department of Transportation to purchase three replacement buses to continue to provide public transit services in the Hoodland area of Clackamas County, especially for seniors and persons with disabilities. The grant application will be for a one time amount of \$460,000. The grant, if awarded, would have no effect on staffing. No County General Funds are involved.

The Mt. Hood Express (formerly the Mountain Express) provides public transit service from the City of Sandy along the Highway 26 corridor including stops in Welches, Rhododendron, Government Camp and Timberline Lodge. The service connects to Sandy's bus service to provide regional public transit access to employees, local residents and persons who desire to access recreational opportunities year round on Mt. Hood. The Villages Shuttle service provides point-deviated bus service to the Villages at Mt. Hood Communities on weekdays, allowing seniors, persons with disabilities and others

who need extra stops and route deviations bus service to access work, medical appointments and other needs. The Mt Hood Express cannot function without safe, reliable vehicles and these funds will allow the replacement of the current vehicles in a timely manner to ensure continuation of the service.

**RECOMMENDATION:**

We recommend the approval to apply for this grant and further recommend the acceptance of the award if funded, and that Richard Swift be authorized to sign all documents necessary to accomplish this action on behalf of the Board of Commissioners.

Respectfully submitted

 Kelly Clark, HHS deputy for

Richard Swift, Director  
Health, Housing and Human Services

# Grant Application Lifecycle Form

Use this form to track your potential grant from conception to submission.

Sections of this form are designed to be completed in collaboration between department program and fiscal staff.

## \*\* CONCEPTION \*\*

*Note: The processes outlined in this form are not applicable to disaster recovery grants.*

### Section I: Funding Opportunity Information - To be completed by Requester

Lead Department: H3S- Social Services Division Application for:  Subrecipient funds  Direct Grant  
Grant Renewal?  Yes  No

Name of Funding Opportunity: 5339 Bus and Bus Facilities Infrastructure Investment Program  
Funding Source:  Federal  State  Local: \_\_\_\_\_  
Requestor Information (Name of staff person initiating form): Teresa Christopherson  
Requestor Contact Information: x5718  
Department Fiscal Representative: Jennifer Snook  
Program Name or Number (please specify): Mt Hood Express  
Brief Description of Project:

ODOT is submitting an application on behalf of transit providers throughout the state of Oregon for the purchase of vehicles and other infrastructure needs. The Mt Hood Express needs three replacement vehicles- two 37 passenger buses and one 16 passenger cutaway- in order to continue to maintain transit services in the Mt Hood area.

Name of Funding (Granting) Agency: FTA

Agency's Web Address for Grant Guidelines and Contact Information:

### OR

Application Packet Attached:  Yes  No

Completed By: Kristina Babcock Date: 2/20/2020

## \*\* NOW READY FOR SUBMISSION TO DEPARTMENT FISCAL REPRESENTATIVE \*\*

### Section II: Funding Opportunity Information - To be completed by Department Fiscal Rep

Competitive Grant  Non-Competing Grant/Renewal  Other Notification Date: 8/9/2017  
CFDA(s), if applicable: 20.526  
Announcement Date: 11/18/2019 Announcement/Opportunity #: \_\_\_\_\_  
Grant Category/Title: BBBFIP Max Award Value: \$460,000  
Allows Indirect/Rate: N/A Match Requirement: 15%  
Application Deadline: N/A Other Deadlines: \_\_\_\_\_  
Grant Start Date: Not stated Other Deadline Description: Application to be completed by ODOT by 3/3/2020  
Grant End Date: Not stated  
Completed By: Teresa Christopherson  
Pre-Application Meeting Schedule: 2/25/2020

**Section III: Funding Opportunity Information** - To be completed at Pre-Application Meeting by Dept Program and Fiscal Staff

**Mission/Purpose:**

1. How does the grant support the Department's Mission/Purpose/Goals?

The Mt Hood Express provides general public transportation to the Mt Hood area, providing a key transportation link for low income households without other transportation options, seniors and persons with disabilities and job seekers. Vehicle replacement is essential for the service to continue operating.

2. How does the grant support the Division's Mission/Purpose/Goals? (If applicable)

See #1

3. What, if any, are the community partners who might be better suited to perform this work?

None

4. What are the objectives of this grant? How will we meet these objectives?

The grant provides funding to replace buses on fixed route systems in order to ensure safety, connections between communities and ADA compliance. The replacement of the Mt Hood Express buses meets that objective.

5. Does the grant proposal fund an existing program? If yes, which program? If no, what should the program be called and what is its purpose?

Yes- the Mt Hood Express

**Organizational Capacity:**

1. Does the organization have adequate and qualified staff? If yes, what types of staff are required? If no, can staff be hired within the grant timeframe?

Yes. The Mt Hood Express Operations are currently run by the City of Sandy. The City of Sandy is staffed appropriately to handle operations. The City of Sandy and Clackamas County have an IGA regarding operation cost and performance expectations.

2. Is there partnership efforts required? If yes, who are we partnering with, what are their roles and responsibilities, and are they committed to the same goals?

We will be partnering with Oregon Department of Transportation that is actually submitting the application to the FTA to provide them with information about anticipated vehicle replacement needs.

3. If this is a pilot project, what is the plan for sunseting the program or staff if it does not continue (e.g. making staff positions temporary or limited duration, etc.)?

N/A

4. If funding creates a new program, does the department intend that the program continue after initial funding is exhausted? If so, how will the department ensure funding (e.g. request new funding during the budget process, discontinue or supplant a different program, etc.)?

N/A

**Collaboration**

1. List County departments that will collaborate on this award, if any.

N/A

**Reporting Requirements**

1. What are the program reporting requirements for this grant?

Fleet asset reporting to ODOT on a quarterly basis (currently being done)

2. What is the plan to evaluate grant performance? Are we using existing data sources? If yes, what are they and where are they housed? If not, is it feasible to develop a data source within the grant timeframe?

N/A- capital purchase

3. What are the fiscal reporting requirements for this grant?

Follow vehicle purchase documentation requirements through ODOT

**Fiscal**

1. Will we realize more benefit than this grant will cost to administer?

Yes- capital purchases of this magnitude are beyond the resources of our existing funding. Without this grant, these vehicles would not be replaced.

2. What other revenue sources are required? Have they already been secured?

None

3. Is there a match requirement? If yes, how much and what type of funding (CGF, Inkind, Local Grant, etc.)?

There is a 15% match requirement which will be met through the use of STIF funds. These match funds will be included in the FY 21-23 STIF application.

4. Is this continuous or one-time funding? If one-time funding, how will program funding be sustained?

One time funding for capital purchases so no sustainability issues involved.

5. Does this grant cover indirect costs? If yes, is there a rate cap? If no, can additional funds be obtained to support indirect expenses and what are they?

N/A

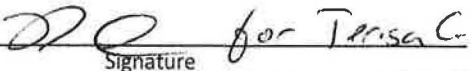
Program Approval:

Teresa Christopherson

8/16/2017

Name (Typed/Printed)

Date

 for Teresa C.

Signature

**\*\* NOW READY FOR PROGRAM MANAGER SUBMISSION TO DIVISION DIRECTOR\*\***



**Section IV: Approvals**

DIVISION DIRECTOR OR ASSISTANT DIRECTOR (or designee, if applicable)			
Brenda Durbin	<i>Brenda Durbin</i>	<i>2-19-2020</i>	<i>[Signature]</i>
Name (Typed/Printed)		Date	Signature

DEPARTMENT DIRECTOR			
Richard Swift	<i>ROONEY A. COOK</i>	<i>2/19/20</i>	<i>[Signature]</i>
Name (Typed/Printed)		Date	Signature

*H3S deputy FOR RICHARD SWIFT.*

IF APPLICATION IS FOR FEDERAL FUNDS, PLEASE SEND COPY OF THIS DOCUMENT BY EMAIL TO FINANCE (FinanceGrants@clackamas.us). ROUTE ORIGINAL OR SCANNED VERSION TO COUNTY ADMIN.

**Section V: Board of County Commissioners/County Administration**

*(Required for all grant applications. All grant awards must be approved by the Board on their weekly consent agenda regardless of amount per local budget law 294.338.)*

**For applications less than \$150,000:**

COUNTY ADMINISTRATOR	Approved: <input type="checkbox"/>	Denied: <input type="checkbox"/>
Name (Typed/Printed)	Date	Signature

**For applications greater than \$150,000 or which otherwise require BCC approval:**

BCC Agenda item #:  Date:

OR

Policy Session Date:

County Administration Attestation

County Administration: re-route to department contact when fully approved.

Department: keep original with your grant file.

February 27, 2020

Board of County Commissioners  
Clackamas County

Members of the Board:

**Approval of a Personal Services Contract with The Mental Health Association of Oregon  
for Peer Delivered Services – Behavioral Health Unit**

Purpose/Outcome	Provides peer delivered services to adults experiencing contact with the Behavioral Health Unit through emergency services.
Dollar Amount and fiscal Impact	Contract maximum payment is \$528,239.10. Initial term: \$229,953.38; renewal term, if awarded: \$298,285.72
Funding Source	No County General Funds are involved. State of Oregon, Community Mental Health Program funds.
Duration	Effective January 1, 2020 and terminates on June 30, 2021, with an option for a two (2) year extension.
Previous Board Action/Review	N/A
Strategic Plan Alignment	1. Provide coordination, assessment, outreach, and recovery services to Clackamas County residents experiencing mental health and addiction distress so they can achieve their own recovery goals 2. Ensure safe, healthy and secure communities.
Counsel Approval	Contract reviewed and approved February 12, 2020.
Contact Person	Mary Rumbaugh, Director – Behavioral Health Division 503-742-5305
Contract No.	County Contract #2413 / BH Contract #9319

**BACKGROUND:**

The Behavioral Health Division of the Health, Housing & Human Services Department requests the approval of a Personal Service Contract with The Mental Health Association of Oregon for Peer Delivered Services for adults experiencing contact with the Behavioral Health Unit (BHU) through emergency services.

The Mental Health Association of Oregon (MHOA) is an inclusive peer-run nonprofit organization committed to promoting self-directed recovery and wellness for all individuals. Behavioral Health has collaborated with MHAO since 2015 to provide peer delivered services to Clackamas County residents.

This Contract is effective January 1, 2020 and continues through June 30, 2021, with an option to extend for an additional two (2) years. The maximum value for the initial term of the Contract is \$229,953.38, should the option to extend be exercised the maximum value of the Contract is \$528,239.10.

**PROCUREMENT PROCESS:**

In accordance with Local Contract Review Board Rule C-047-0260 and applicable ORS, on July 15, 2019, the Clackamas County Procurement Office published a Request for Proposals (RFP) for Behavioral Health Peer Delivered Services. The RFP included this project and six others.

Proposers were allowed to bid on one or more projects included in the RFP. The RFP closed on August 1, 2019. An evaluation committee scored the proposals in accordance with the RFP scoring criteria and recommended that The Mental Health Association of Oregon be awarded this contract. Notice of Intent to Award was published on ORPIN September 25, 2019, and no protests were received.

*Healthy Families. Strong Communities.*

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

Clackamas.us/h3s

**RECOMMENDATION:**

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

Respectfully Submitted,

Richard Swift, Director  
Health, Housing & Human Services Department

Placed on the board agenda of \_\_\_\_\_ by the Procurement Division.



**CLACKAMAS COUNTY  
PERSONAL SERVICES CONTRACT  
County Contract #2413 / BH Contract #9319**

This Personal Services Contract (this “Contract”) is entered into between **The Mental Health Association of Oregon** (“Contractor”), and Clackamas County, a political subdivision of the State of Oregon (“County”) on behalf of its Health Housing and Human Services Department, Behavioral Health Division.

**ARTICLE I.**

- 1. Effective Date and Duration.** This Contract shall become effective on **January 1, 2020** and upon signature of both parties. County and Contractor acknowledge that Work under the Contract was performed prior to the effective date. County and Contractor hereby ratify and approve Work performed prior to execution of the Contract, but not earlier than January 1, 2020. Provided, however, this ratification does not constitute a waiver of any right, title, claim, defense, or other action County may have against Contractor arising out of or related to the previously-performed Work. Unless earlier terminated or extended, this Contract shall expire on June 30, 2021. Subject to the approval of both parties, this Contract includes one (1) optional renewal term of two (2) years.
- 2. Scope of Work.** Contractor shall provide the following personal services: Adult Peer Delivered Services – Behavioral Health Unit (“Work”), further described in **Exhibit B**.
- 3. Consideration.** The County agrees to pay Contractor, from available and authorized funds, a sum not to exceed **two hundred twenty-nine thousand nine hundred fifty-three dollars and thirty-eight cents (\$229,953.38)**, for accomplishing the Work required by this Contract during the initial term, which expires on June 30, 2021, and the total contract value including the two (2) year renewal term shall not exceed **five hundred twenty-eight thousand two hundred thirty-nine dollars and ten cents (\$528,239.10)**. Consideration rates are on a fixed rate basis in accordance with the rates and costs specified in **Exhibit D**. If any interim payments to Contractor are made, such payments shall be made only in accordance with the schedule and requirements in **Exhibit D**.
- 4. Invoices and Payments.** Contractor shall submit monthly invoices for Work performed, as more fully described in **Exhibit D**.
- 5. Contract Documents.** This Contract consists of the following selected documents, which are attached and incorporated by reference herein:

- Contract
- Exhibit A – Definitions
- Exhibit B – Scope of Work
- Exhibit C – CMHP Service Element
- Exhibit D – Compensation
- Exhibit E – Insurance
- Exhibit F – CMHP Required Federal Terms and Conditions
- Exhibit G – CMHP Required Provider Contract Provisions

**The Mental Health Association of Oregon – Personal Services Contract (CMHP) #9319**

- Exhibit H – Business Associate Agreement (BAA)
- Exhibit I – Qualified Service Organization Business Associate Agreement (QSOBAA)

**6. Contractor and County Contact Information**

The Mental Health Association of Oregon Address: 10373 NE Hancock St. Suite 106 Portland, OR 97220 Phone: 503-922-2377 Email: sbrisco@mhaoforegon.org	Clackamas County – Behavioral Health Division Address: 2051 Kaen Road, Suite 154 Oregon, City, OR 97045 Phone: 503-742-5335 Email: BHContracts@clackamas.us
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Payment information will be reported to the Internal Revenue Service (“IRS”) under the name and taxpayer ID number submitted. (See I.R.S. 1099 for additional instructions regarding taxpayer ID numbers.) Information not matching IRS records will subject Contractor payments to backup withholding.

**ARTICLE II.**

- 1. ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence, in accordance with generally accepted accounting procedures and practices, sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. County and their duly authorized representatives shall have access to the books, documents, papers, and records of Contractor, which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Contractor shall maintain such books and records for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.
- 2. AVAILABILITY OF FUTURE FUNDS.** Any continuation or extension of this Contract after the end of the fiscal period in which it is written is contingent on a new appropriation for each succeeding fiscal period sufficient to continue to make payments under this Contract, as determined by the County in its sole administrative discretion.
- 3. CAPTIONS.** The captions or headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Contract.
- 4. COMPLIANCE WITH APPLICABLE LAW.** Contractor shall comply with all applicable federal, state and local laws, regulations, executive orders, and ordinances, as such may be amended from time to time. Contractor shall further comply with any and all terms, conditions, and other obligations as may be required by applicable State and Federal agencies providing funding for performance under this Contract, whether or not specifically referenced herein.
- 5. COUNTERPARTS.** This Contract may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- 6. GOVERNING LAW.** This Contract, and all rights, obligations, and disputes arising out of it, shall be governed and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without regard to principles of conflicts of law. Any claim, action, or suit between County and Contractor that arises out of or relates to the performance of this Contract shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought in a

**The Mental Health Association of Oregon – Personal Services Contract (CMHP) #9319**

federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the County of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. Contractor, by execution of this Contract, hereby consents to the personal jurisdiction of the courts referenced in this section.

- 7. RESPONSIBILITY FOR DAMAGES; INDEMNITY.** Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, the conduct of Work, or from any act, omission, or neglect of Contractor, its subcontractors, agents, or employees. The Contractor agrees to indemnify, hold harmless and defend the County, and its officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees, subcontractors, or agents. However, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of County or any department of County, nor purport to act as legal representative of County or any of its departments, without first receiving from the Clackamas County Counsel's Office authority to act as legal counsel for County, nor shall Contractor settle any claim on behalf of County without the approval of the Clackamas County Counsel's Office. County may, at its election and expense, assume its own defense and settlement.

Contractor shall indemnify, hold harmless and defend the State of Oregon, and its officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees, subcontractors, or agents.

- 8. INDEPENDENT CONTRACTOR STATUS.** The service(s) to be rendered under this Contract are those of an independent contractor. Although the County reserves the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, County cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work. Contractor is not to be considered an agent or employee of County for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; and (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to County employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits.
- 9. INSURANCE.** Contractor shall secure at its own expense and keep in effect during the term of the performance under this Contract the insurance required and minimum coverage indicated in **Exhibit E**.
- 10. LIMITATION OF LIABILITIES.** This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent. Except for liability arising under or related to Article II, Section 13 or Section 21 neither party shall be liable for (i) any indirect, incidental, consequential or special damages under this Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms.

- 11. NOTICES.** Except as otherwise provided in this Contract, any required notices between the parties shall be given in writing by personal delivery, email, or mailing the same. Any communication or notice mailed shall be deemed to be given five (5) days after mailing, and immediately upon personal delivery, or within 2 hours after the email is sent during County’s normal business hours (Monday – Thursday, 7:00 a.m. to 6:00 p.m.) (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered.
- 12. OWNERSHIP OF WORK PRODUCT.** All work product of Contractor that results from this Contract (the “Work Product”) is the exclusive property of County. County and Contractor intend that such Work Product be deemed “work made for hire” of which County shall be deemed the author. If for any reason the Work Product is not deemed “work made for hire,” Contractor hereby irrevocably assigns to County all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark or trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as County may reasonably request in order to fully vest such rights in County. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications. Notwithstanding the above, County shall have no rights in any pre-existing Contractor intellectual property provided to County by Contractor in the performance of this Contract except to copy, use and re-use any such Contractor intellectual property for County use only. If this Contract is terminated prior to completion, and the County is not in default, County, in addition to any other rights provided by this Contract, may require the Contractor to transfer and deliver all partially completed Work Product, reports or documentation that the Contractor has specifically developed or specifically acquired for the performance of this Contract.
- 13. REPRESENTATIONS AND WARRANTIES.** Contractor represents and warrants to County that (A) Contractor has the power and authority to enter into and perform this Contract; (B) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (C) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work; (D) Contractor is an independent contractor as defined in ORS 670.600; and (E) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.
- 14. SURVIVAL.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Article II, Sections 1, 6, 7, 11, 13, 14, 16 and 21, and all other rights and obligations which by their context are intended to survive. However, such expiration shall not extinguish or prejudice the County’s right to enforce this Contract with respect to: (a) any breach of a Contractor warranty; or (b) any default or defect in Contractor performance that has not been cured.
- 15. SEVERABILITY.** If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.
- 16. SUBCONTRACTS AND ASSIGNMENTS.** Contractor shall not enter into any subcontracts for any of the Work required by this Contract, or assign or transfer any of its interest in this Contract by operation of law or otherwise, without obtaining prior written approval from the County, which shall be granted or denied in the County’s sole discretion. In addition to any provisions the County may

**The Mental Health Association of Oregon – Personal Services Contract (CMHP) #9319**

require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this Article II, Sections 1, 7, 8, 13, 16 and 27 as if the subcontractor were the Contractor. County's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.

- 17. SUCCESSORS IN INTEREST.** The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- 18. TAX COMPLIANCE CERTIFICATION.** The Contractor shall comply with all federal, state and local laws, regulation, executive orders and ordinances applicable to this Contract. Contractor represents and warrants that it has complied, and will continue to comply throughout the duration of this Contract and any extensions, with all tax laws of this state or any political subdivision of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318. Any violation of this section shall constitute a material breach of this Contract and shall entitle County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract or applicable law.
- 19. TERMINATIONS.** A) This Contract may be terminated by mutual agreement of the parties or by the County for one of the following reasons: (i) for convenience upon thirty (30) days written notice to Contractor; or (ii) at any time the County fails to receive funding, appropriations, or other expenditure authority as solely determined by the County. Upon receipt of written notice of termination from the County, Contractor shall immediately stop performance of the Work. (B) if Contractor breaches any Contract provision or is declared insolvent, County may terminate after thirty (30) days written notice with an opportunity to cure. Upon termination of this Contract, Contractor shall deliver to County all documents, information, works-in-progress and other property that are or would be deliverables had the Contract Work been completed. Upon County's request, Contractor shall surrender to anyone County designates, all documents, research, objects or other tangible things needed to complete the Work.
- 20. REMEDIES.** If terminated by the County due to a breach by the Contractor, then the County shall have any remedy available to it in law or equity. If this Contract is terminated for any other reason, Contractor's sole remedy is payment for the goods and services delivered and accepted by the County, less any setoff to which the County is entitled.
- 21. NO THIRD PARTY BENEFICIARIES.** County and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.
- 22. TIME IS OF THE ESSENCE.** Contractor agrees that time is of the essence in the performance this Contract.
- 23. FOREIGN CONTRACTOR.** If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.
- 24. FORCE MAJEURE.** Neither County nor Contractor shall be held responsible for delay or default caused by events outside the County or Contractor's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, Contractor shall make all reasonable efforts to



**The Mental Health Association of Oregon – Personal Services Contract (CMHP) #9319**

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.

**25. WAIVER.** The failure of County to enforce any provision of this Contract shall not constitute a waiver by County of that or any other provision.

**26. PUBLIC CONTRACTING REQUIREMENTS.** Pursuant to the public contracting requirements contained in Oregon Revised Statutes (“ORS”) Chapter 279B.220 through 279B.235, Contractor shall:

- a. Make payments promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the work provided for in the Contract.
- b. Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of the Contract.
- c. Not permit any lien or claim to be filed or prosecuted against County on account of any labor or material furnished.
- d. Pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
- e. If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a subcontractor by any person in connection with the Contract as such claim becomes due, the proper officer representing Clackamas County may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due Contractor by reason of the Contract.
- f. As applicable, the Contractor shall pay employees for work in accordance with ORS 279B.235, which is incorporated herein by this reference. The Contractor shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract, and failure to comply is a breach entitling County to terminate this Contract for cause.
- g. If the Work involves lawn and landscape maintenance, Contractor shall salvage, recycle, compost, or mulch yard waste material at an approved site, if feasible and cost effective.

**27. ABUSE REPORTING.** Contractor shall comply with all processes and procedures of child abuse (ORS 419B.005 – 419B.050), mentally ill and developmentally disabled abuse (ORS 430.731 – 430.768 and OAR 943-045-0250 through 493-045-0370) and elder abuse reporting laws (ORS 124.050 – 124.092) as if Contractor were a mandatory abuse reporter. If Contractor is not a mandatory reporter by statute, these reporting requirements shall apply during work hours only. Contractor shall immediately report to the proper State or law enforcement agency circumstances (and provide such other documentation as may be relevant) supporting reasonable cause to believe that any person has abused a child, mentally ill or developmentally disabled adult or an elderly person, or that any such person has been abused.

**28. CONFIDENTIALITY.** Contractor acknowledges that it and its employees and agents may, in the course of performing their obligations under this Contract, be exposed to or acquire information that the County desires or is required to maintain as confidential. Any and all information of any form obtained by Contractor or its employees or agents in the performance of this Contract, including but not limited to Personal Information (as “Personal Information” is defined in ORS 646A.602(11), shall be deemed to be confidential information of the County (“Confidential Information”). Any reports or other documents or items (including software) which result from the use of the Confidential Information by Contractor shall be treated with respect to confidentiality in the same manner as the Confidential Information.

Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever

**The Mental Health Association of Oregon – Personal Services Contract (CMHP) #9319**

(other than in the performance of this Contract), and to advise each of its employees and agents of their obligations to keep Confidential Information confidential.

Contractor agrees that, except as directed by the County, Contractor will not at any time during or after the term of this Contract, disclose, directly or indirectly, any Confidential Information to any person, and that upon termination or expiration of this Contract or the County's request, Contractor will turn over to the County all documents, papers, records and other materials in Contractor's possession which embody Confidential Information. Contractor acknowledges that breach of this Contract, including disclosure of any Confidential Information, or disclosure of other information that, at law or in good conscience or equity, ought to remain confidential, will give rise to irreparable injury to the County that cannot adequately be compensated in damages. Accordingly, the County may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of the County and are reasonable in scope and content.

Contractor agrees to comply with all reasonable requests by the County to ensure the confidentiality and nondisclosure of the Confidential Information, including if requested and without limitation: (a) obtaining nondisclosure agreements, in a form approved by the County, from each of Contractor's employees and agents who are performing services, and providing copies of such agreements to the County; and (b) performing criminal background checks on each of Contractor's employees and agents who are performing services, and providing a copy of the results to the County.

Contractor shall report, either orally or in writing, to the County any use or disclosure of Confidential Information not authorized by this Contract or in writing by the County, including any reasonable belief that an unauthorized individual has accessed Confidential Information. Contractor shall make the report to the County immediately upon discovery of the unauthorized disclosure, but in no event more than two (2) business days after Contractor reasonably believes there has been such unauthorized use or disclosure. Contractor's report shall identify: (i) the nature of the unauthorized use or disclosure, (ii) the Confidential Information used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Contractor has taken or shall take to prevent future similar unauthorized use or disclosure. Contractor shall provide such other information, including a written report, as reasonably requested by the County.

Notwithstanding any other provision in this Contract, Contractor will be responsible for all damages, fines and corrective action (including credit monitoring services) arising from disclosure of such Confidential Information caused by a breach of its data security or the confidentiality provisions hereunder.

The provisions in this Section shall operate in addition to, and not as limitation of, the confidentiality and similar requirements set forth in the rest of the Contract, as it may otherwise be amended. Contractor's obligations under this Contract shall survive the expiration or termination of the Contract, as amended, and shall be perpetual.

**29. CRIMINAL BACKGROUND CHECK REQUIREMENTS.** Contractor shall be required to have criminal background checks (and in certain instances fingerprint background checks) performed on all employees, agents, or subcontractors that perform services under this Contract. Only those employees, agents, or subcontractors that have met the acceptability standards of the County may perform services under this Contract or be given access to Personal Information, Confidential Information or access to County facilities.

**The Mental Health Association of Oregon – Personal Services Contract (CMHP) #9319**

**30. FURTHER ASSURANCES.** Contractor agrees to take all necessary steps, and execute and deliver any and all necessary written instruments, to perform under this Contract including, but not limited to, executing all additional documentation necessary for County to comply with applicable State or Federal funding requirements.

**31. MERGER.** THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER REFERENCED THEREIN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY ALL PARTIES. ANY SUCH AMENDMENT, CONSENT, OR WAIVER SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. CONTRACTOR, BY THE SIGNATURE HERETO OF ITS AUTHORIZED REPRESENTATIVE, IS AN INDEPENDENT CONTRACTOR, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS CONTRACT, AND CONTRACTOR AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

[Signature page follows]

**SIGNATURE PAGE**

By their signatures below, the parties to this Contract agree to the terms, conditions, and content expressed herein.

**THE MENTAL HEALTH ASSOCIATE OF OREGON**

\_\_\_\_\_  
Authorized Signature                                  Date

\_\_\_\_\_  
Name / Title (Printed)

165224-84  
\_\_\_\_\_  
Oregon Business Registry #

Domestic Nonprofit Corporation / Oregon  
\_\_\_\_\_  
Entity Type / State of Formation

**COUNTY OF CLACKAMAS BOARD OF COMMISSIONERS**

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

**Signing on behalf of the Board:**

\_\_\_\_\_  
Richard Swift, Director                                  Date  
Health, Housing and Human Services

Approved as to form:

\_\_\_\_\_  
County Counsel    Date

**EXHIBIT A  
DEFINITIONS**

Whenever used in this Contract, the following terms shall have the meanings set forth below:

1. **“Addiction Treatment, Recovery, & Prevention Services”** means treatment Services for Individuals diagnosed with disorders related to the taking of a drug of abuse including alcohol, to the side effects of a medication, and to a toxin exposure. The disorders include substance use disorders such as substance dependence and substance abuse, and substance-induced disorders, including substance intoxication, withdrawal, delirium, and dementia, as well as substance induced psychotic disorder, mood disorder, etc., as defined in DSM criteria.
2. **“Aging and People with Disabilities” or “APD”** means a division within the Department of Human Services that is responsible for management, financing and regulation services for aging adults and people with disabilities.
3. **“Allowable Costs”** means the costs described in 2 CFR Part 200 or 45 CFR Part 75, as applicable, except to the extent such costs are limited or excluded by other provisions of the Contract.
4. **“Client” or “Individual”** means, with respect to a particular Service, any person who is receiving that Service, in whole or in part, with funds provided under this Contract.
5. **“Community Mental Health Program” or “CMHP”** means an entity that is responsible for planning the delivery of Services for Individuals with mental or emotional disturbances, drug abuse, alcohol abuse or gambling addiction problems in a specific geographic area of the state under an agreement with OHA or a Local Mental Health Authority.
6. **“Contractor” or “Provider”** means the person or entity providing particular Services, or a portion thereof, under a contract or agreement.
7. **“Coordinated Care Organizations” or “CCO”** means a corporation, governmental agency, public corporation, or other legal entity that is certified as meeting the criteria adopted by the Oregon Health Authority under ORS 414.625 to be accountable for care management and to provide integrated and coordinated health care for each of the organization’s members.
8. **“County”** means Clackamas County, a political subdivision of the State of Oregon.
9. **“DHS”** means the Department of Human Services of the State of Oregon.
10. **“Health Services Division” or “HSD”** means the division of OHA that is responsible for Community Mental Health, Addiction Treatment, Recovery & Prevention, and Problem Gambling Services.
11. **“Individual” or “client”** means, with respect to a particular Service, any person who is receiving that Service, in whole or in part, with funds provided under a contract or agreement.
12. **“Local Mental Health Authority” or “LMHA”** means one of the following entities:
  - a. The board of county commissioners of one or more counties that establishes or operates a Community Mental Health Program;
  - b. The tribal council, in the case of a federally recognized tribe of Native Americans, that elects to enter into an agreement to provide mental health services; or
  - c. A regional local mental health authority comprised of two or more boards of county commissioners.
13. **“Measures and Outcomes Tracking System” or “MOTS”** means the OHA data system that stores data submitted by contractors and subcontractors.

**The Mental Health Association of Oregon – Personal Services Contract (CMHP) #9319**

14. **“Misexpenditure”** means funds, other than an Overexpenditure, disbursed to a Contractor by County under this Contract and expended by Contractor that is:
  - a. Identified by the federal government as expended contrary to applicable statutes, rules, OMB Circulars or 45 CFR Part 75, as applicable, or any other authority that governs the permissible expenditure of such funds, for which the federal government has requested reimbursement by the State of Oregon, whether in the form of a federal determination of improper use of federal funds, a federal notice of disallowance, or otherwise; or
  - b. Identified by the State of Oregon, OHA, or County as expended in a manner other than that permitted by this Contract, including without limitation any funds expended by Contractor contrary to applicable statutes, rules, OMB Circulars or 45 CFR Part 75, as applicable, or any other authority that governs the permissible expenditure of such funds; or
  - c. Identified by the State of Oregon, OHA, or County as expended on the delivery of a Service that did not meet the standards and requirements of the Contract with respect to that Service.
15. **“OAR”** means the Oregon Administrative Rules as promulgated by the Oregon Health Authority and as amended from time to time.
16. **“Oregon Health Authority” or “OHA”** means the agency within the State of Oregon that is responsible for Problem Gambling, Addiction Treatment, Recovery, & Prevention Services, children and adult Community Mental Health Services, and maintaining custody of persons committed to the state, by courts, for care and treatment of mental illness.
17. **“Overexpenditure”** means funds disbursed to Contractor by County under the Contract and expended by Contractor that is identified by the State of Oregon, OHA, or County, through any disbursement reconciliation permitted or required under the Contract, as in excess of the funds Contractor is entitled to.
18. **“Provider” or “Contractor”** mean the person or entity providing particular Services, or a portion thereof, under a contract or agreement.
19. **“Provider Contract” or “Provider Agreement”** means the contract, subcontract, agreement or subrecipient agreement to purchase particular Services.
20. **“Serious and Persistent Mental Illness (SPMI)”** means the current DSM diagnostic criteria for at least one of the following conditions as a primary diagnosis for an adult age 18 or older:
  - a. Schizophrenia and other psychotic disorders;
  - b. Major depressive disorder;
  - c. Bipolar disorder;
  - d. Anxiety disorders limited to Obsessive Compulsive Disorder (OCD) and Post Traumatic Stress Disorder (PTSD);
  - e. Schizotypal personality disorder; or
  - f. Borderline personality disorder.
21. **“Trauma Informed Services”** means Services that are reflective of the consideration and evaluation of the role that trauma plays in the lives of people seeking Community Mental Health and Addiction Treatment, Recovery, & Prevention Services, including recognition of the traumatic effect of misdiagnosis and coercive treatment. Services are responsive to the vulnerabilities of trauma survivors and are delivered in a way that avoids inadvertent re-traumatization and facilitates individual direction of services.
22. **“Underexpenditure”** means funds disbursed by County under this Contract that remain unexpended at Contract termination or expiration.

**EXHIBIT B  
SCOPE OF WORK**

**Background**

As part of Clackamas County’s Behavioral Health Redesign, which began in 2009, Clackamas Behavioral Health Division committed to the development and implementation of a Peer Delivered Services System of Care for children, families, transition age youth, and adults receiving mental health and addiction services.

The term “peer” refers to a person who self-identifies as an individual who has lived experience of a mental health condition and/or an addiction and is successfully living in recovery. Peers provide support to an individual who has similar lived experiences. Peer support services are developed by peers for peers.

Family peer support refers to support activities provided by a person who has had similar lived experience raising a child who has experienced a mental health condition and/or addiction. The support services provided have been developed by family members for family members.

The supports provided are defined by the person/family asking for support. The individual/family defines their interests and goals and sets tasks to achieve those goals. The peer provides the support needed to complete those tasks and achieve the goals. Peer support services are designed to be flexible and community-based to meet the unique needs of each individual/family.

**Statement of Work**

Contractor shall:

1. Provide:
  - a. 2.0 FTE Adult Peer Support Specialists. May consist of more than two (2) Peer Support Specialists. Must have lived experience specific to mental health, addictions, and navigation of treatment and support resources.
  - b. Supervision of Peer Support Specialists to be provided by a qualified peer supervisor provided by Contractor.
2. Provide peer support services to the following population(s):
  - a. Adults experiencing contact with the Behavioral Health Unit (BHU) through emergency services.
3. Develop referral sources through outreach to appropriate system and community partners.
  - a. Behavioral Health Unit clinical staff located at MHC
  - b. Other law enforcement entities
4. Assist and support individuals in navigating service systems and identifying resources.
5. Assist individuals in accessing substance use/abuse treatment programs, support groups, and other resources in the community at the individuals request.
6. Provide referrals to other peer support resources as appropriate or requested by the individual.
7. Assist in identifying natural supports within the individual’s community.
8. Write a brief note describing support service provided and any follow up support to be provided.
9. Provide administrative and operational oversight of Peer Support staff that includes:
  - a. Training and continuing education
  - b. Schedule coordination
  - c. Supervision
10. Participate in appropriate system partner and/or COUNTY behavioral health division meetings.
11. Participate in COUNTY technical assistance activities to expand and strengthen the peer delivery system.

**The Mental Health Association of Oregon – Personal Services Contract (CMHP) #9319**

12. Perform exclusion list checks at hire and monthly of all employees, contractors, volunteers, interns, and any other persons providing, arranging, or paying for behavioral health services paid in whole or in part with Medicaid dollars, against the Office of Inspectors (OIG) General Exclusions Database and the System for Award Management (SAM) Exclusions Database. Provider will maintain monthly verification of this check.
13. Ensure that Contractor’s employees and subcontractors, if permitted, maintain active licenses/certifications via a monitoring process with the licensing board including OHA’s Traditional Health Worker Registry.

**Standards of Work**

1. Work in collaboration with the County to promote a recovery oriented support system that focuses on hope, choice, personal responsibility, and self-determination.
2. Reinforce the values and culture of peer support through education and the modeling of strong support skills.
3. Use a whole health approach, not only addressing issues of mental health and substance use, but spiritual and physical health as requested by the individual served.

**Reporting Requirements**

Contractor shall prepare and submit quarterly summary reports on Contract activities no later than thirty (30) calendar days after the end of the quarter.

<b>Reporting Schedule</b>		
	<b>Reporting Period</b>	<b>Report Due</b>
<b>1<sup>st</sup> Report</b>	January 1 – March 31	No later than April 30
<b>2<sup>nd</sup> Report</b>	April 1 – June 30	No later than July 30
<b>3<sup>rd</sup> Report</b>	July 1 – September 30	No later than October 30
<b>4<sup>th</sup> Report</b>	October 1 – December 31	No later than January 30

**County Reporting Requirements (Survey Monkey Report)**

People Served:

1. Total number of individuals served each quarter.
2. Number of new individuals served each quarter.
3. Number of individuals that concluded services each quarter.
4. Number of “inappropriate” referrals this quarter (in need of more specialized support ie: LGBTQQ, youth vs. adult support, need for CRM services vs. mental health PSS/PWS, capacity, etc.)
  - a. Why was a new peer program needed?
  - b. Where was the new referral sent?

Experience of Support Services:

1. Engagement rate for individuals in support services (determined by number of individuals who had at least two (2) “kept” appointments/contacts with their PSS/PWS within six (6) weeks of referral)
2. Percentage of individuals receiving support that felt their overall wellness (whole health) was improved since working with a peer.
3. Percentage of individuals receiving support that felt their quality of life has improved since working with a peer.
4. Percentage of individuals that reported an increase in natural supports since working with a peer.



**The Mental Health Association of Oregon – Personal Services Contract (CMHP) #9319**

5. Percentage of individuals that report feeling accepted in their community since working with a peer.
6. Percentage of individuals that reported they would have returned to a higher level of care if not for peer support.
  - a. If an individual/youth returned to a higher level of care, what was accessed (see Survey Monkey)

**Community Supports and Workforce Development:**

1. Number of support groups provided to individuals served
  - a. Number of people attending support groups
2. Number of workshops/educational opportunities for people served
  - a. Number of people attending workshops/educational opportunities
3. Number of outreach activities to potential referral sources
4. Number of program staff attending trainings, continuing education courses

**Reporting Requirements (BHU)**

Quarterly reports shall include:

1. Services Received
  - a. Number of people served on site
  - b. Number of people served in the community
2. Demographic information for people served
  - a. Number of people age 12-18 years
  - b. Number of people age 19-25
  - c. Number of people age 26-55
  - d. Number of people age 56+
  - e. Number of people identifying as Female
  - f. Number of people identifying as Male
  - g. Number of people identifying as Transgender
  - h. Number of people identifying as Non-binary
3. Ethnicity
  - a. American Indian/Alaska Native
  - b. Hispanic/Latino
  - c. Asian
  - d. Pacific Islander
  - e. African
  - f. African American/Black
  - g. White
  - h. Unknown
  - i. Decline to Answer
4. Number of people who acquired a safe, permanent alcohol and drug free place to live in the community during service participation
5. Number of people who gained employment or engaged in productive educational or vocational activities during service participation
6. Number of people who remained crime-free during service participation
7. Number of people served who are being retained from the previous quarter
8. (Optional) Please provide a success story from this last quarter

**EXHIBIT C  
CMHP SERVICE ELEMENT**

**A&D 63 – PEER DELIVERED SERVICES-ADDICTION TREATMENT, RECOVERY & PREVENTION SERVICES**

**1. Service Description**

For the purpose of A&D 63 Peer Delivered Services-Addiction Treatment, Recovery & Prevention Services (A&D 63 Services), “Recovery Center”, “Facilitating Center”, “Peer Delivered Services”, and “Peer Support Specialist” shall have the following meanings:

**Recovery Centers** are comprised of and led by people in recovery from Substance Use Disorders, which is defined in OAR 309-019-0105(112). The Recovery Centers maintain a structured daily schedule of activities where Peer Delivered Services may be delivered. Recovery Centers serve as recovery resources for the local community.

**Facilitating Centers** provide ongoing technical assistance and training for Recovery Centers and the community. Facilitating Centers provide resources and support for developing, expanding, and sustaining Recovery Centers. People in recovery must be involved in every aspect of program design and implementation.

**Peer Delivered Services** means an array of agency or community-based services and supports provided by peers, Peer Support Specialists, and Peer Wellness Specialists to Individuals or family members with similar lived experience. These services are intended to support the needs of Individuals and families, as applicable, as they progress through various stages in their recovery from Substance Use Disorders. Peer Delivered Services include, but are not limited to, the following:

**Emotional support.** Emotional support refers to demonstrations of empathy, caring, and concern that enhance self-esteem and confidence. Peer mentoring, peer coaching, and peer-led support groups are examples of peer-to-peer recovery services that provide emotional support.

**Informational support.** Informational support refers to sharing knowledge, information and skills. Peer-led life skills training, job skills training, educational assistance, and health and wellness information are examples of informational support.

**Instrumental support.** Instrumental support includes modeling and peer-assisted daily-life tasks that people with Substance Use Disorders may lack. Examples of instrumental support include getting to support groups, accessing childcare, completing job applications, locating alcohol and drug-free housing, and obtaining vocational, educational, and navigating health and social service programs.

**Affiliational support.** Affiliational support facilitates contact with other people to promote learning of social and recreational skills, create a community, and acquire a sense of belonging. Examples of affiliational support include introduction to Recovery Center, alcohol and drug-free socialization opportunities, and exploring activities.

**Family Support.** Family Support includes educational, informational, and affiliation services for family members with relatives (as identified by the family) who are in recovery from Substance Use Disorders. These services are designed to help families

develop and maintain positive relationships, improve family functioning, increase understanding of recovery processes, and build connections among family members from mutual support.

**Peer Support Specialists** are individuals as defined in OAR 309-019-0105(81), as such rules may be revised from time to time. Peer Support Specialists must comply with all requirements in accordance with OAR 410-180-0300 through 410-180-0380.

**Population to be served, Eligible population, or Participants:** Individuals with Substance Use Disorders and who are seeking recovery are the target population.

## **2. Performance Requirements**

Providers of A&D 63 Services funded through this Contract shall provide Peer Delivered Services in a manner that benefits the Population to be served. The Peer Delivered Services must be delivered at Recovery Centers, agencies, or in communities, by Peer Support Specialists or Peer Wellness Specialists.

To the satisfaction of County, Contractor shall ensure that Peer Delivered Services are:

- a.** Delivered by Peer Support Specialists and Peer Wellness Specialists who continuously adhere to the Standards of Professional Conduct in OAR 410-180-0340;
- b.** Delivered by Peer Support Specialists and Peer Wellness Specialists who are jointly supervised by clinical staff with documented training and experience with Peer Delivered Services and a certified Peer Support Specialist or Peer Wellness Specialist;
- c.** Delivered in accordance with a plan developed with or by the Individual receiving Services;
- d.** Documented and regularly reviewed by the Individual receiving Services; and
- e.** Documented either in MOTS or MMIS or comparably reported.

Providers employing Peer Support Specialists and Peer Wellness Specialist must develop and implement quality assurance processes to improve the quality of Peer Delivered Services supported by funds provided through this Contract. County may recommend additional actions to improve quality.

## **3. Reporting Requirements**

All Individuals receiving A&D 63 Services with funds provided through this Agreement must be enrolled and that Individual's record maintained in the Measures and Outcomes Tracking System (MOTS) as specified in OHA's MOTS Reference Manual, located at: <http://www.oregon.gov/OHA/amh/mots/Pages/resource.aspx>, and the Who Reports in MOTS Policy.

Contractor shall provide timely and relevant information to County as needed to enable County to submit reports to the State of Oregon on the delivery of all Services supported with funds provided through this Contract.

## **4. Confirmation of Performance and Reporting Requirements**

Contractor shall be required to demonstrate through the data properly reported in accordance with the "Reporting Requirements" section above and any reporting requirement contained in Exhibit B, Scope of Work, of this Contract, how funds provided for A&D 63 Services were utilized consistent with the terms and limitations herein to meet the performance requirement of this

**The Mental Health Association of Oregon – Personal Services Contract (CMHP) #9319**

Service Description, and that the Contractor may be subject to the monitoring and review of performance requirements and quality measures by OHA.

**EXHIBIT D  
COMPENSATION**

- a. Payment for all Work performed under this Contract shall be subject to the provisions of ORS 293.462 and shall not exceed the total maximum sum of **\$528,239.10**.

Contractor shall be compensated on a fixed rate basis of **\$12,775.18** per month for the Contract's eighteen (18) month initial term. Should the renewal option be exercised, the fixed rate shall be **\$12,428.57** per month for the resulting twenty-four (24) month term.

- b. Contractor shall submit **monthly invoices by the 10<sup>th</sup> day of the month** following the month Services were provided. The invoice shall include:

Contract #**9319**,  
Month of service,  
Total amount due for all Services provided during the month, and  
Total amount billed to date by Contractor prior to the current invoice.

If Contractor fails to present invoices in proper form within sixty (60) calendar days after the end of the month in which the services were rendered, Contractor waives any rights to present such invoice thereafter and to receive payment therefor.

All invoices and supporting documentation shall be sent by email or mail to:

[BHAP@clackamas.us](mailto:BHAP@clackamas.us) and [NCaster@clackamas.us](mailto:NCaster@clackamas.us)

Alternatively, invoices and supporting documentation may be mailed to:

Clackamas County Behavioral Health Division  
Accounts Payable  
2051 Kaen Road, Suite #154  
Oregon City, Oregon 97045

When submitting electronically, designate Contractor name and Contract #**9319** in the subject of the email.

- c. Payments shall be made to Contractor, within thirty (30) days, following the County's review and approval of invoices submitted by Contractor. Contractor shall not submit invoices for, and the County will not pay, any amount in excess of the maximum compensation amount set forth above. If this maximum compensation amount is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment.

**EXHIBIT E  
INSURANCE**

During the term of this Contract, Contractor shall maintain in full force at its own expense, each insurance noted below:

**1. Workers Compensation.** Contractor, its subcontractors, if any, and all employers providing work, labor, or materials under this Contract are subject employers under the Oregon Workers' Compensation Law, and shall either comply with ORS 656.017, which requires said employers to provide workers' compensation coverage that satisfies Oregon law for all their subject workers, or shall comply with the exemption set out in ORS 656.126. Contractors shall maintain employer's liability insurance with limits of \$500,000 each accident, \$500,000 disease each employee, and \$500,000 each policy limit.

**2. Professional Liability.**  **Required by County**  **Not required by County**

Professional Liability insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each claim, incident, or occurrence, with an annual aggregate limit of \$2,000,000. This is to cover damages because of personal injury, bodily injury, death, or damage to property caused by error, omission or negligent acts related to the professional services to be provided under this Contract. The policy must provide extending reporting period coverage for claims made within two years after the contract is completed.

If this box is checked Professional Liability limits shall be \$2,000,000 per occurrence and \$4,000,000 in annual aggregate.

**3. General Liability.**  **Required by County**  **Not required by County**

General Liability insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each claim, incident, or occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage for the protection of the **County and the State of Oregon, and its officers, elected officials, agents, and employees.** It shall include contractual liability coverage for the indemnity provided under this Contract.

If this box is checked General Liability limits shall be \$2,000,000 per occurrence and \$4,000,000 in annual aggregate for bodily injury/death, and \$200,000 per occurrence and \$600,000 annual aggregate for property damage.

**4. Automobile Liability.**  **Required by County**  **Not required by County**

**Commercial Automobile Liability** insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each accident for Bodily Injury, Death, and Property Damage, including coverage for owned, hired, or non-owned vehicles, as applicable.

**Commercial Automobile Liability** insurance limits shall be \$2,000,000 per occurrence and \$4,000,000 in annual aggregate for bodily injury/death, and \$200,000 per occurrence and \$600,000 annual aggregate for property damage.

**Personal Automobile Liability** insurance limits shall be not less than \$250,000/occurrence, \$500,000/aggregate, and \$100,000/property damage.

**5. Physical Abuse and Molestation Liability.**  **Required by County**  **Not required by County**

**The Mental Health Association of Oregon – Personal Services Contract (CMHP) #9319**

Physical Abuse and Molestation Liability insurance with a combined single limit of not less than \$1,000,000 each claim, incident, or occurrence, with an annual aggregate limit of \$2,000,000. Coverage shall be provided through either general liability or professional liability coverage. Proof of Sex Abuse/Molestation insurance coverage must be provided.

**6. Privacy and Network Security.**     **Required by County**     **Not required by County**

Privacy and Network Security coverages shall be obtained and maintained to provide protection against liability for (a) system attack; (b) denial or loss of service attacks; (c) spread of malicious software code; (d) unauthorized access and use of computer systems; and (e) liability from the loss or disclosure of confidential data with limit of \$1,000,000 per claim/annual aggregate.

If this box is checked Privacy and Network Security limit shall be at least \$4,000,000.

**7. Additional Insured Provision.** The insurance, other than Professional Liability (except to the extent it only applies to Commercial General Liability exposures), Workers' Compensation, Personal Automobile Liability and Pollution Liability Insurance, shall include **Clackamas County and the State of Oregon, and their officers, elected officials, agents, and employees** as an additional insured.

**8. Primary Coverage Clause.** Contractor's insurance shall apply as primary and will not seek contribution from any insurance or self-insurance maintained by, or provided to, the additional insureds listed above. This must be noted on the insurance certificate.

**9. Cross-Liability Clause.** A cross-liability clause or separation of insureds condition will be included in all general liability, professional liability, pollution and errors and omissions policies required by this Contract.

**10. "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 Contract, for a minimum of twenty-four (24) months following the later of: (i) the Contractor's completion and County's acceptance of all Services required under the Provider Contract; or (ii) the expiration of all warranty periods provided under the Contract. 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 County may grant approval of the maximum "tail" coverage period reasonably available in the marketplace. If County approval is granted, the Contractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.

**11. Self-insurance.** Contractor may fulfill one or more of its insurance obligation herein through a program of self-insurance, provided that Contractor's self-insurance program complies with all applicable laws, provides coverage equivalent in both type and level to that required in this Exhibit, and is reasonably acceptable to County. Contractor shall furnish an acceptable insurance certificate to County for any insurance coverage required by this Contract that is fulfilled through self-insurance. Stop-loss insurance and reinsurance coverage against catastrophic and unexpected expenses may not be self-insured.

**12. Certificates of Insurance.** Contractor shall furnish evidence of the insurance required in this Contract. Contractor will maintain the insurance in full force throughout the duration of this Contract. No Contract shall be in effect until the required certificates have been received, approved, and accepted by County. A renewal certificate will be sent to County ten (10) days prior to coverage expiration. The insurance for general liability and commercial automobile liability must include an

**The Mental Health Association of Oregon – Personal Services Contract (CMHP) #9319**

endorsement naming **Clackamas County and the State of Oregon, and their officers, elected officials, agents, and employees** as additional insureds with respect to the Work under this Contract. If requested, complete copies of insurance policies, trust agreements, etc. shall be provided to the County. The Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions and/or self-insurance.

Certificate Holder should be:

Clackamas County, 2051 Kaen Road, Suite 154, Oregon City, Oregon 97045

Certificates of Insurance should be submitted electronically or by mail to:

[BHContracts@clackamas.us](mailto:BHContracts@clackamas.us)

Clackamas County  
Contracts Administration  
2051 Kaen Road, Suite 154  
Oregon City, OR 97045

- 13. Insurance Carrier Rating.** Coverages provided by the Contractor must be underwritten by an insurance company deemed acceptable by the County. Insurance coverage shall be provided by companies admitted to do business in Oregon or, in the alternative, rated A- or better by Best's Insurance Rating. The County reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.
- 14. Waiver of Subrogation.** Contractor agrees to waive their rights of subrogation arising from the Work performed under this Contract.
- 15. Notice of cancellation or change.** There shall be no cancellation, material change, exhaustion of aggregate limits, reduction of limits, or intent not to renew the insurance coverage(s) without thirty (30) days written notice from the Contractor or its insurer(s) to the County at the following address: Clackamas County Behavioral Health Division, 2051 Kaen Road, Suite 154, Oregon City, OR 97045 or [BHContracts@clackamas.us](mailto:BHContracts@clackamas.us).
- 16. Insurance Compliance.** The County will be entitled to enforce Contractor compliance with the insurance requirements, and will 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, terminating the Contract as permitted by the Contract, or pursuing legal action to enforce the insurance requirements. In no event shall County permit a Contractor to work under this Contract when the County is aware that the Contractor is not in compliance with the insurance requirements.



**EXHIBIT F  
CMHP REQUIRED FEDERAL TERMS AND CONDITIONS**

Contractor shall comply with the following federal requirements, when federal funding is being used to fund this Contract. For purposes of this Contract, all references to federal and state laws are references to federal and state laws as they may be amended from time to time.

- 1. Miscellaneous Federal Provisions.** Contractors shall comply with all federal laws, regulations, and executive orders applicable to the Contract or to the delivery of Services. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Contract: (a) Title VI and VII of the Civil Rights Act of 1964, as amended, (b) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, (c) the Americans with Disabilities Act of 1990, as amended, (d) Executive Order 11246, as amended, (e) the Health Insurance Portability and Accountability Act of 1996, as amended, (f) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended, (g) the Vietnam Era Veterans’ Readjustment Assistance Act of 1974, as amended, (h) all regulations and administrative rules established pursuant to the foregoing laws, (i) all other applicable requirements of federal civil rights and rehabilitation statutes, rules and regulations, and (j) all federal law governing operation of Community Mental Health Programs, including without limitation, all federal laws requiring reporting of Client abuse. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Contract and required by law to be so incorporated. No federal funds may be used to provide Services in violation of 42 U.S.C. 14402.
- 2. Equal Employment Opportunity.** Contractor shall comply with Executive Order 11246, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375, and as supplemented in U.S. Department of Labor regulations (41 CFR Part 60).
- 3. Clean Air, Clean Water, EPA Regulations.** If this Contract, including amendments, exceeds \$150,000 Contractor shall comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 7606), the Federal Water Pollution Control Act as amended (commonly known as the Clean Water Act) (33 U.S.C. 1251 to 1387), specifically including, but not limited to Section 508 (33 U.S.C.1368), Executive Order 11738, and Environmental Protection Agency regulations (2 CFR Part 1532), which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to OHA, United States Department of Health and Human Services and the appropriate Regional Office of the Environmental Protection Agency. Contractors shall include in all contracts with subcontractors receiving more than \$150,000, language requiring the subcontractor to comply with the federal laws identified in this section.
- 4. Energy Efficiency.** Contractors shall comply with applicable mandatory standards and policies relating to energy efficiency that are contained in the Oregon energy conservation plan issued in compliance with the Energy Policy and Conservation Act 42 U.S.C. 6201 et.seq. (Pub. L. 94-163).
- 5. Truth in Lobbying.** By signing this Contract, Contractor certifies, to the best of the Contractor’s knowledge and belief that:

**The Mental Health Association of Oregon – Personal Services Contract (CMHP) #9319**

- a.** No federal appropriated funds have been paid or will be paid, by or on behalf of Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative contract, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative contract.
- b.** If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the Contractor shall complete and submit Standard Form LLL, “Disclosure Form to Report Lobbying” in accordance with its instructions.
- c.** Contractor shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients and subcontractors shall certify and disclose accordingly.
- d.** This certification is a material representation of fact upon which reliance was placed when this Contract was made or entered into. Submission of this certification is a prerequisite for making or entering into this Contract imposed by section 1352, Title 31 of the U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- e.** No part of any federal funds paid to Contractor under this Contract shall be used, other than for normal and recognized executive legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, electronic communication, radio, television, or video presentation designed to support or defeat the enactment of legislation before the United States Congress or any State or local legislature itself, or designed to support or defeat any proposed or pending regulation, administrative action, or order issued by the executive branch of any State or local government.
- f.** No part of any federal funds paid to Contractor under this Contract shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence the enactment of legislation, appropriations, regulation, administrative action, or Executive order proposed or pending before the United States Congress or any State government, State legislature or local legislature or legislative body, other than for normal and recognized executive-legislative relationships or participation by an agency or officer of a State, local or tribal government in policymaking and administrative processes within the executive branch of that government.
- g.** The prohibitions in subsections (e) and (f) of this section shall include any activity to advocate or promote any proposed, pending or future Federal, State or local tax increase, or any proposed, pending, or future requirement or restriction on any legal consumer product, including its sale or marketing, including but not limited to the advocacy or promotion of gun control.

**The Mental Health Association of Oregon – Personal Services Contract (CMHP) #9319**

- h.** No part of any federal funds paid to Contractor under this Contract may be used for any activity that promotes the legalization of any drug or other substance included in schedule I of the schedules of controlled substances established under section 202 of the Controlled Substances Act except for normal and recognized executive congressional communications. This limitation shall not apply when there is significant medical evidence of a therapeutic advantage to the use of such drug or other substance or that federally sponsored clinical trials are being conducted to determine therapeutic advantage.
- 6. Resource Conservation and Recovery.** Contractor shall comply with all mandatory standards and policies that relate to resource conservation and recovery pursuant to the Resource Conservation and Recovery Act (codified at 42 U.S.C. 6901 et. seq.). Section 6002 of that Act (codified at 42 U.S.C. 6962) requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency. Current guidelines are set forth in 40 CFR Part 247.
- 7. Audits.** Subrecipients, as defined in 45 CFR 75.2, shall comply with applicable Code of Federal Regulations (CFR) governing expenditure of federal funds. If a sub-recipient expends \$750,000 or more in federal funds (from all sources) in a fiscal year beginning on or after December 26, 2014, it shall have a single organization-wide audit conducted in accordance with the provisions of 45 CFR part 75, subpart F. Copies of all audits must be submitted to County within thirty (30) calendar days of completion. If a sub recipient expends less than \$750,000 in a fiscal year beginning on or after December 26, 2014, it is exempt from Federal audit requirements for that year. Records must be available for review or audit by appropriate officials.
- 8. Debarment and Suspension.** Contractor shall not permit any person or entity to be a provider if the person or entity is listed on the non-procurement portion of the General Service Administration’s “List of Parties Excluded from Federal Procurement or Non-procurement Programs” in accordance with Executive Orders No. 12549 and No. 12689, “Debarment and Suspension”. (See 2 CFR Part 180.) This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory authority other than Executive Order No. 12549. Providers with awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.
- 9. Drug-Free Workplace.** Contractor shall comply with the following provisions to maintain a drug-free workplace: (i) Contractor certifies that it will provide a drug-free workplace by publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance, except as may be present in lawfully prescribed or over-the-counter medications, is prohibited in Contractor’s workplace or while providing Services to OHA clients. Contractor’s notice shall specify the actions that will be taken by Contractor against its employees for violation of such prohibitions; (ii) Establish a drug-free awareness program to inform its employees about: The dangers of drug abuse in the workplace, Contractor’s policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations; (iii) Provide each employee to be engaged in the performance of Services under this Contract a copy of the statement mentioned in paragraph (i) above; (iv) Notify each employee in the statement required by paragraph (i) above

**The Mental Health Association of Oregon – Personal Services Contract (CMHP) #9319**

that, as a condition of employment to provide services under this Contract, the employee will: abide by the terms of the statement, and notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) calendar days after such conviction; (v) Notify OHA within ten (10) calendar days after receiving notice under subparagraph (iv) above from an employee or otherwise receiving actual notice of such conviction; (vi) Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program by any employee who is so convicted as required by Section 5154 of the Drug-Free Workplace Act of 1988; (vii) Make a good-faith effort to continue a drug-free workplace through implementation of subparagraphs (i) through (vi) above; (viii) Require any provider to comply with subparagraphs through (vii) above; (ix) Neither Contractor, or any of Contractor's employees, officers, agents may provide any Service required under this Contract while under the influence of drugs. For purposes of this provision, "under the influence" means: observed abnormal behavior or impairments in mental or physical performance leading a reasonable person to believe the Contractor or Contractor's employee, officer, agent has used a controlled substance, prescription or non-prescription medication that impairs the Contractor or Contractor's employee, officer, agent or Contractor's performance of essential job function or creates a direct threat to OHA clients or others. Examples of abnormal behavior include, but are not limited to: hallucinations, paranoia or violent outbursts. Examples of impairments in physical or mental performance include, but are not limited to: slurred speech, difficulty walking or performing job activities; and (x) Violation of any provision of this subsection may result in termination of this Contract.

10. **Pro-Children Act.** Contractor shall comply with the Pro-Children Act of 1994 (codified at 20 U.S.C. Section 6081 et. seq.).
  
11. **Medicaid Services.** To the extent Contractor provides any Service in which costs are paid in whole or in part by Medicaid, Contractor shall comply with all applicable federal and state laws and regulation pertaining to the provision of Medicaid Services under the Medicaid Act, Title XIX, 42 U.S.C. Section 1396 et. seq., including without limitation:
  - a. Keep such records as are necessary to fully disclose the extent of the services provided to Individuals receiving Medicaid assistance and shall furnish such information to any state or federal agency responsible for administering the Medicaid program regarding any payments claimed by such person or institution for providing Medicaid Services as the state or federal agency may from time to time request. 42 U.S.C. Section 1396a (a)(27); 42 CFR Part 431.107(b)(1) & (2).
  - b. Comply with all disclosure requirements of 42 CFR Part 1002.4(a) and 42 CFR 455 Subpart (B).
  - c. Maintain written notices and procedures respecting advance directives in compliance with 42 U.S.C. Section 1396 (a) (57) and (w), 42 CFR Part 431.107 (b) (4), and 42 CFR Part 489 subpart I.
  - d. Certify when submitting any claim for the provision of Medicaid Services that the information submitted is true, accurate and complete. Contractor shall acknowledge Contractor's understanding that payment of the claim will be from federal and state funds and that any falsification or concealment of a material fact may be prosecuted under federal and state laws.
  - e. Entities receiving \$5 million or more annually (under this Contract and any other

**The Mental Health Association of Oregon – Personal Services Contract (CMHP) #9319**

Medicaid agreement) for furnishing Medicaid health care items or services shall, as a condition of receiving such payments, adopt written fraud, waste and abuse policies and procedures and inform employees, providers, and agents about the policies and procedures in compliance with Section 6032 of the Deficit Reduction Act of 2005, 42 U.S.C. § 1396a (a) (68).

12. **ADA.** Contractor shall comply with Title II of the Americans with Disabilities Act of 1990 (codified at 42 U.S.C. 12131 et. seq.) in the construction, remodeling, maintenance and operation of any structures and facilities, and in the conduct of all programs, services and training associated with the delivery of Services.
13. **Agency-Based Voter Registration.** If applicable, Contractor shall comply with the Agency-based Voter Registration sections of the National Voter Registration Act of 1993 that require voter registration opportunities be offered where an Individual may apply for or receive an application for public assistance.
14. **Disclosure.**
  - a. 42 CFR 455.104 requires the State Medicaid agency to obtain the following information from any provider of Medicaid or CHIP services, including fiscal agents of providers and managed care entities: (1) the name and address (including the primary business address, every business location and P.O. Box address) of any person (Individual or corporation) with an ownership or control interest in the provider, fiscal agent or managed care entity; (2) in the case of an Individual, the date of birth and Social Security Number, or, in the case of a corporation, the tax identification number of the entity, with an ownership interest in the provider, fiscal agent or managed care entity or of any subcontractor in which the provider, fiscal agent or managed care entity has a 5% or more interest; (3) whether the person (Individual or corporation) with an ownership or control interest in the provider, fiscal agent or managed care entity is related to another person with ownership or control interest in the provider, fiscal agent or managed care entity as a spouse, parent, child or sibling, or whether the person (Individual or corporation) with an ownership or control interest in any subcontractor in which the provider, fiscal agent or managed care entity has a 5% or more interest is related to another person with ownership or control interest in the provider, fiscal agent or managed care entity as a spouse, parent, child or sibling; (4) the name of any other provider, fiscal agent or managed care entity in which an owner of the provider, fiscal agent or managed care entity has an ownership or control interest; and, (5) the name, address, date of birth and Social Security Number of any managing employee of the provider, fiscal agent or managed care entity.
  - b. 42 CFR 455.434 requires as a condition of enrollment as a Medicaid or CHIP provider, to consent to criminal background checks, including fingerprinting when required to do so under state law, or by the category of the provider based on risk of fraud, waste and abuse under federal law. As such, a provider must disclose any person with a 5% or greater direct or indirect ownership interest in the provider whom has been convicted of a criminal offense related to that person's involvement with the Medicare, Medicaid, or title XXI program in the last ten (10) years.
  - c. County or OHA reserves the right to take such action required by law, or where

County or OHA has discretion, it deems appropriate, based on the information received (or the failure to receive) from the provider, fiscal agent or managed care entity.

**15. Special Federal Requirements Applicable to Addiction Treatment, Recovery & Prevention Services for Agencies receiving Substance Abuse Prevention and Treatment (SAPT) Block Grant funds.**

**a. Order for Admissions:**

- (i) Pregnant women who inject drugs;
- (ii) Pregnant substance abusers;
- (iii) Other Individuals who inject drugs; and
- (iv) All others.

**b. Women’s or Parent’s Services.** If Contractor provides A&D 61 and A&D 62 Services, Contractor must:

- (1) Treat the family as a unit and admit both women or parent and their children if appropriate.
- (2) Provide or arrange for the following services to pregnant women and women with dependent children:
  - (a) Primary medical care, including referral for prenatal care;
  - (b) Pediatric care, including immunizations, for their children;
  - (c) Gender-specific treatment and other therapeutic interventions, e.g. sexual and physical abuse counseling, parenting training, and childcare;
  - (d) Therapeutic interventions for children in custody of women or parent in treatment, which address, but are not limited to, the children’s developmental needs and issues of abuse and neglect; and
  - (e) Appropriate case management services and transportation to ensure that women or parents and their children have access to the services in 1 through 4 above.

**c. Pregnant Women.** If Contractor provides any Addiction Treatment, Recovery & Prevention Services other than A&D 84, Problem Gambling, Client Finding Outreach Services, Contractor must:

- (1) Within the priority categories, if any, set forth in a particular Service Description, give preference in admission to pregnant women in need of treatment, who seek or are referred for and would benefit from such Services, within forty-eight (48) hours;
- (2) If Contractor has insufficient capacity to provide treatment Services to a pregnant woman, Contractor must refer the women to another Provider with capacity or if no available treatment capacity can be located, the outpatient Provider that the Individual is enrolled with will ensure that Interim Services are being offered. Counseling on the effects of alcohol and drug use on the fetus must be given within forty-eight (48) hours, including a referral for prenatal care; and
- (3) Perform outreach to inform pregnant women of the availability of treatment Services targeted to them and the fact that pregnant women receive preference in admission to these programs.

**d. Intravenous Drug Abusers.** If Contractor provides any Addiction Treatment, Recovery & Prevention Services other than A&D 84, Problem Gambling, Client Finding Outreach Services, Contractor must:

**The Mental Health Association of Oregon – Personal Services Contract (CMHP) #9319**

- (1) Within the priority categories, if any, set forth in a particular Service Description and subject to the preference for pregnant women described above, give preference in admission to intravenous drug abusers;
  - (2) Programs that receive funding under the grant and that treat Individuals for intravenous substance abuse, upon reaching ninety (90) percent of its capacity to admit Individuals to the program, must provide notification of that fact to the State within seven (7) calendar days;
  - (3) If Contractor receives a request for admission to treatment from an intravenous drug abuser, Contractor must, unless it succeeds in referring the Individual to another Provider with treatment capacity, admit the Individual to treatment not later than:
    - (a) Fourteen (14) calendar days after the request for admission to Contractor is made;
    - (b) One hundred-twenty (120) after the date of such request if no Provider has the capacity to admit the Individual on the date of such request and, if Interim Services are made available not less than forty-eight (48) hours after such request; or
    - (c) If Contractor has insufficient capacity to provide treatment Services to an intravenous drug abuser, refer the intravenous drug abuser to another Provider with capacity or if no available treatment capacity can be located, the outpatient provider that the Individual is enrolled with will ensure that interim services are being offered. If the Individual is not enrolled in outpatient treatment and is on a waitlist for residential treatment, the provider referring the Individual to residential services will make available counseling and education about human immunodeficiency virus (HIV) and tuberculosis (TB), risk of sharing needles, risks of transmission to sexual partners and infant, steps to ensure HIV and TB transmission does not occur, referral for HIV or TB treatment services, if necessary, within forty-eight (48) hours.
- e. Infectious Diseases.** If Contractor provides any Addiction Treatment, Recovery & Prevention Services, other than A&D 84, Problem Gambling, Client Finding Outreach Services, Contractor must:
- (1) Complete a risk assessment for infectious disease including human immunodeficiency virus (HIV) and tuberculosis (TB), as well as sexually transmitted diseases, based on protocols established by OHA, for every Individual seeking Services from Contractor; and
  - (2) Routinely make tuberculosis services available to each Individual receiving Services for alcohol/drug abuse either directly or through other arrangements with public or non-profit entities and, if Contractor denies an Individual admission on the bases of lack of capacity, refer the Individual to another provider of tuberculosis services.
  - (3) For purposes of (ii) above, “tuberculosis services” means:
    - (a) Counseling the Individual with respect to tuberculosis;
    - (b) Testing to determine whether the Individual has contracted such disease and testing to determine the form of treatment for the disease that is appropriate for the Individual; and
    - (c) Appropriate treatment services.
- f. OHA Referrals.** If Contractor provides any Addiction Treatment, Recovery &

Prevention Services other than A&D 84, Problem Gambling, Client Finding Outreach Services, Contractor must, within the priority categories, if any, set forth in a particular Service Description and subject to the preference for pregnant women and intravenous drug users described above, give preference in Addiction Treatment, Recovery & Prevention and Problem Gambling Service delivery to persons referred by OHA.

- g. Barriers to Treatment.** Where there is a barrier to delivery of any Addiction Treatment, Recovery & Prevention and Problem Gambling Service due to culture, gender, language, illiteracy, or disability, Contractor shall develop support services available to address or overcome the barrier, including:

  - (1) Providing, if needed, hearing impaired or foreign language interpreters.
  - (2) Providing translation of written materials to appropriate language or method of communication.
  - (3) Providing devices that assist in minimizing the impact of the barrier.
  - (4) Not charging clients for the costs of measures, such as interpreters, that are required to provide nondiscriminatory treatment.
- h. Misrepresentation.** Contractor shall not knowingly or willfully make or cause to be made any false statement or representation of a material fact in connection with the furnishing of items or Services for which payments may be made by County or OHA.
- i. Oregon Residency.** Addiction Treatment, Recovery & Prevention and Problem Gambling Services funded through this Contract, may only be provided to residents of Oregon. Residents of Oregon are Individuals who live in Oregon. There is no minimum amount of time an Individual must live in Oregon to qualify as a resident so long as the Individual intends to remain in Oregon. A child's residence is not dependent on the residence of his or her parents. A child living in Oregon may meet the residency requirement if the caretaker relative with whom the child is living is an Oregon resident.
- j. Tobacco Use.** If Contractor has Addiction Treatment, Recovery & Prevention Services treatment capacity that has been designated for children, adolescents, pregnant women, and women with dependent children, Contractor must implement a policy to eliminate smoking and other use of tobacco at the facilities where the Services are delivered and on the grounds of such facilities.
- k. Client Authorization.** Contractor must comply with 42 CFR Part 2 when delivering an Addiction Treatment, Recovery & Prevention Service that includes disclosure of Client information for purposes of eligibility determination. Contractor must obtain Client authorization for disclosure of billing information, to the extent and in the manner required by 42 CFR Part 2, before a Disbursement Claim is submitted with respect to delivery of an Addiction Treatment, Recovery & Prevention Service to that Individual.

**16. Special Federal Requirements Applicable To Addiction Treatment, Recovery & Prevention Services for Contractors Receiving Temporary Assistance for Needy Families (TANF) Grant Funds.**

**Funding Requirements.** TANF may only be used for families receiving TANF, and for families at-risk of receiving TANF, and for the purpose of providing housing services (room and board) for Individuals who are dependent children ages eighteen (18) years or younger whose parent is in adult addiction residential treatment, so that the children may reside with their parent in the same treatment facility. Families at-risk of receiving TANF must:



**The Mental Health Association of Oregon – Personal Services Contract (CMHP) #9319**

- a. Include a dependent child age eighteen (18) years of age or under, who is living with a parent or caretaker relative. “Caretaker relative” means a blood relative of the child; stepmother, stepfather, stepbrother, or stepsister, or an individual who has legally adopted the child.
- b. Be an Oregon resident.
- c. Have income at or below 25% of the Federal Poverty Level.

Use of TANF block grant funds and state expenditures counted towards TANF MOE must meet the requirements of 45 CFR 263. Only non-medical services may be provided with TANF Block Grant Funds.

17. **Community Mental Health Block Grant (CFDA 93.958).** All funds, if any, awarded under this Contract for Community Mental Health Services are subject to the federal use restrictions and requirements set forth in Catalog of Federal Domestic Assistance Number 93.958 and to the federal statutory and regulatory restrictions imposed by or pursuant to the Community Mental Health Block Grant portion of the Public Health Services Act, 42 U.S.C. 300x-1 *et. seq.*, and Contractor shall comply with those restrictions.
18. **Substance Abuse Prevention and Treatment (CFDA 93.959).** To the extent Contractor provides any Service in which costs are paid in whole or in part by the Substance Abuse, Prevention, and Treatment Block Grant, Contractor shall comply with federal rules and statutes pertaining to the Substance Abuse, Prevention, and Treatment Block Grant, including the reporting provisions of the Public Health Services Act (42 U.S.C. 300x through 300x-66) and 45 CFR 96.130 regarding the sale of tobacco products. Regardless of funding source, to the extent Contractor provides any substance abuse prevention or treatment services, Contractor shall comply with the confidentiality requirements of 42 CFR Part 2. CMHP may not use the funds received under this Contract for inherently religious activities, as described in 45 CFR Part 87.
19. **Information Required by 2 CFR Subtitle B with guidance at 2 CFR Part 200.** All required data elements in accordance with 45 CFR 75.352 are available at: <http://www.oregon.gov/oha/hsd/amh/Pages/federal-reporting.aspx>.
20. **Super Circular Requirements.** 2 CFR Part 200, or the equivalent applicable provision adopted by the awarding agency in 2 CFR Subtitle B, including but not limited to the following:
  - a. **Property Standards.** 2 CFR 200.313, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, which generally describes the required maintenance, documentation, and allowed disposition of equipment purchased with federal funds.
  - b. **Procurement Standards.** When procuring goods and services (including professional consulting services), applicable state procurement regulations found in the Oregon Public Contracting Code, ORS chapters 279A, 279B, and 279C or 2 CFR §§ 200.318 through 200.326, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, as applicable.
  - c. **Contract Provisions.** The contract provisions listed in 2 CFR Part 200, Appendix II, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, that are hereby incorporated into this Exhibit, are, to the extent applicable, obligations of Contractor.

**EXHIBIT G**  
**CMHP REQUIRED PROVIDER CONTRACT PROVISIONS**

- 1. Expenditure of Funds.** Contractor may expend the funds paid to Contractor under this Contract solely on the delivery of contracted services subject to the following limitations (in addition to any other restriction of limitations imposed by this Contract):
  - a.** Contractor may not expend on the delivery of Service any funds paid to Contractor under this Contract in excess of the amount reasonable and necessary to provide quality delivery of these Services.
  - b.** If this Contract requires Contractor to deliver more than one service, Contractor may not expend funds paid to Contractor under this Contract for a particular service on the delivery of any other service.
  - c.** If this Contract requires Contractor to deliver Addiction Treatment, Recovery & Prevention, and Problem Gambling Services, Contractor may not use the funds paid to Contractor under this Contract for such services to:
    - i.** Provide inpatient hospital services;
    - ii.** Make cash payment to intended recipients of health services;
    - iii.** Purchase or improve land, to purchase, construct or permanently improve (other than minor remodeling) any building or other facility or to purchase major medical equipment;
    - iv.** Satisfy any requirement for expenditure of non-federal funds as a condition for receipt of federal funds (whether the federal funds are received under this Contract or otherwise);
    - v.** Carry out any program prohibited by section 245(b) of the Health Omnibus Programs Extension Act of 1988 (codified at 42 U.S.C. 300ee-5), which generally prohibits funds provided under this Contract from being used to provide Individuals with hypodermic needles or syringes so that such Individuals may use illegal drugs, unless the Surgeon General of the Public Health Service determines that a demonstration needle exchange program would be effective in reducing drug abuse.
  - d.** Contractor may expend funds paid to Contractor under this Contract only in accordance with OMB Circulars or 45 CFR Part 75, as applicable on Allowable Costs. If Contractor expends \$750,000 or more in federal funds (from all sources) in a fiscal year beginning on or after December 26, 2014, it shall have a single organization-wide audit conducted in accordance with the provisions of 45 CFR Part 75, subpart F. If Contractor expends less than \$750,000 in a fiscal year beginning on or after that date, it is exempt from Federal audit requirements for that year. Records must be available for review or audit by appropriate officials. Contractor, if subject to this requirement, shall at Contractor's own expense submit to OHA a copy of, or electronic link to, its annual audit subject to this requirement covering the funds expended under this Contract and shall submit or cause to be submitted to OHA the annual audit of any subrecipient(s), contractor(s), or subcontractor(s) of Contractor responsible for the financial management of funds received under this Contract. Copies of all audits must be

submitted to OHA within thirty (30) calendar days of completion. Audit costs for audits not required in accordance with the Single Audit Act are unallowable. Contractor may not use the funds received under this Contract for inherently religious activities, as described in 45 CFR Part 87.

**2. Records Maintenance, Access and Confidentiality.**

- a. Access to Records and Facilities.** County, the Oregon Health Authority, the Secretary of State's Office of the State of Oregon, the Federal Government, and their duly authorized representatives shall have access to the books, documents, papers and records of Contractor that are directly related to this Contract, the funds paid to Contractor hereunder, or any services delivered hereunder for the purpose of making audits, examinations, excerpts, copies and transcriptions. In addition, Contractor shall permit authorized representatives of County and the Oregon Health Authority to perform site reviews of all services delivered by Contractor hereunder.
- b. Retention of Records.** Contractor shall retain and keep accessible all books, documents, papers, and records that are directly related to this Contract, the funds paid to Contractor hereunder or to any services delivered hereunder, for a minimum of six (6) years, or such longer period as may be required by other provisions of this Contract or applicable law, following the termination or expiration of this Contract. If there are unresolved audit or other questions at the end of the six (6) year period, Contractor shall retain the records until the questions are resolved.
- c. Expenditure Records.** Contractor shall document the expenditure of all funds paid to Contractor under this Contract. Unless applicable federal law requires Contractor to utilize a different accounting system, Contractor shall create and maintain all expenditure records in accordance with generally accepted accounting principles and in sufficient detail to permit County and the Oregon Health Authority to verify how the funds paid to Contractor under this Contract were expended.
- d. Client Records.** Unless otherwise specified in this Contract, Contractor shall create and maintain a client record for each client who receives services under this Contract. The client record must contain:
  - i.** Client identification;
  - ii.** Problem assessment;
  - iii.** Treatment, training and/or care plan;
  - iv.** Medical information when appropriate; and
  - v.** Progress notes including service termination summary and current assessment or evaluation instrument as designated by the Oregon Health Authority in administrative rules.

Contractor shall retain client records in accordance with OAR 166-150-0005 through 166-150-0215 (State Archivist). Unless OAR 166-150-0005 through 166-150-0215 requires a longer retention period, client records must be retained for a minimum of six (6) years from termination or expiration of this Contract.

- e. Safeguarding of Client Information.** Contractor shall maintain the confidentiality of client records as required by applicable state and federal law, including without limitation, ORS 179.945 to 179.507, 45 CRF Part 205, 45 CRF Part 2, any administrative rule adopted by the Oregon Health Authority, implementing the foregoing laws, and any written policies made available to Contractor by County or by the Oregon Health Authority. Contractor shall create and maintain written policies and procedures related to the disclosure of client information, and shall make such policies and procedures available to County and the Oregon Health Authority for review and inspection as reasonably requested by County or the Oregon Health Authority.
- f. Date Reporting.** All Individuals receiving Services with funds provided under this Contract must be enrolled and that Individual’s record maintained in the Measures and Outcome Tracking System (MOTS) as specified in OHA’s MOTS Reference Manual, located at: <http://www.oregon.gov/oha/amh/mots/Pages/resource.aspx>, and the “Who Reports in MOTS Policy”, as stated follows:

**Which Behavioral Health Providers are Required to Report in MOTS?**

The data collection system for the Health Systems Division (HSD) is the Measures and Outcomes Tracking System or MOTS. In general, behavioral health providers who are either licensed or have a letter of approval from the HSD (or the former Addictions & Mental Health Division [AMH]), and receive public funds to provide treatment services are required to report to MOTS. In addition to the general rule above, there are four basic ways to classify who is required to submit data to MOTS:

- i.** Providers with HSD Agreements that deliver treatment services (this includes Community Mental Health Programs [CMHP], Local Mental Health Authorities [LMHA] and other types of community behavioral health providers); these programs should all have a license or letter of approval from the HSD or AMH;
- ii.** Providers that are subcontractors (can be a subcontractor of a CMHP or other entity that holds a contract with HSD or OHA, such as a Mental Health Organization [MHO], or a Coordinated Care Organization [CCO]);
- iii.** Providers that HSD does not contract with but are required to submit data to MOTS by State/Federal statute or rule; these include DUII providers and methadone maintenance providers; and
- iv.** Providers that contract with other governmental agencies (e.g., Oregon Youth Authority [OYA] or the Department of Corrections [DOC] to deliver mental health and/or substance abuse services).

NOTE: Primary care physicians that provide a single service on behalf of the CMHP are not required to report the MOTS status or service level data.

If there are any questions, contact MOTS Support at [MOTS.Support@state.or.us](mailto:MOTS.Support@state.or.us).

- 3. Alternative Formats of Written Materials.** In connection with the delivery of Services, Contractor shall:

**The Mental Health Association of Oregon – Personal Services Contract (CMHP) #9319**

- a. Make available to a Client, without charge to the Client, upon the Client's, the County's or the Oregon Health Authority's request, an and all written materials in alternate, if appropriate, formats as required by the Oregon Health Authority's administrative rules or by the Oregon Health Authority's written policies made available to Contractor.
- b. Make available to a Client, without charge to the Client, upon the Client's, County's or the Oregon Health Authority's request, any and all written materials in the prevalent non-English languages in the area served by the Contractor.
- c. Make available to a Client, without charge to the Client, upon the Client's, County's or the Oregon Health Authority's request, oral interpretation services in all non-English languages in the area served by Contractor.
- d. Make available to a Client with hearing impairments, without charge to the Client, upon the Client's, County's or the Oregon Health Authority's request, sign language interpretation services and telephone communications access services.

For purposes of the foregoing, "written material" includes, without limitation, all written materials created or delivered in connection with the services and all Contractor contracts related to this Contract. The County may develop its own forms and materials and with such forms and materials the County shall be responsible for making them available to a Client, without charge to the Client or OHA, in the prevalent non-English language. OHA shall be responsible for making its forms and materials available, without charge to the Client or CMHP, in the prevalent non-English language.

**4. Reporting Requirements.** Contractor shall prepare and furnish the following information to County and the Oregon Health Authority when a service is delivered under this Contract.

- a. Client, service and financial information as specified in the applicable Service Description attached hereto and incorporated herein by this reference.
- b. All additional information and reports that County or the Oregon Health Authority reasonably requests.

**5. Compliance with Law.** Contractor shall comply with all state and local laws, regulations, executive orders and ordinances applicable to the Contract or to the delivery of services hereunder. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Contract:

- a. all applicable requirements of state civil rights and rehabilitation statutes, rules and regulations;
- b. all state laws governing operation of community mental health programs, including without limitation all administrative rules adopted by the Oregon Health Authority related to community mental health programs or related to client rights, OAR 943-005-0000 through 943-005-0070, prohibiting discrimination against Individuals with disabilities;
- c. all state laws requiring reporting of client abuse; and

**The Mental Health Association of Oregon – Personal Services Contract (CMHP) #9319**

- d. ORS 659A.400 to 659A.409, ORS 659A.145 and all regulations and administrative rules established pursuant to those laws in the construction, remodeling, maintenance and operation of any structures and facilities, and in the conduct of all programs, services and training associated with the delivery of services under this Contract.

The laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Contract and required by law to be so incorporated. All employers, including Contractor, that employ subject workers who provide services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. In addition, Contractor shall comply, as if it were County thereunder, with the federal requirements set forth in **Exhibit F, Required Federal Terms and Conditions**, to the certain 2019-2021 Intergovernmental Agreement for the Financing of Community Mental Health, Addiction Treatment, Recovery & Prevention, and Problem Gambling Services between County and the Oregon Health Authority dates as of July 1, 2019, which Exhibit is incorporated herein by this reference. For purposes of the Contract, all references in this Contract to federal and state laws are references to federal and state laws as they may be amended from time to time.

6. Unless Contractor is a State of Oregon governmental agency, Contractor agrees that it is an independent contractor and not an agent of the State of Oregon, the Oregon Health Authority or County.
7. To the extent permitted by applicable law, Contractor shall defend (in the case of the state of Oregon and the Oregon Health Authority, subject to ORS Chapter 180), save and hold harmless the State of Oregon and Clackamas County, and their officers, employees, and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of, or relating to the operations of the Contractor, including but not limited to the activities of Contractor or its officers, employees, subcontractors or agents under this Contract.
8. Contractor understands that Contractor may be prosecuted under applicable federal and state criminal and civil laws for submitting false claims, concealing material facts, misrepresentation, falsifying data system input, other acts of misrepresentation, or conspiracy to engage therein.
9. Contractor shall only conduct transactions that are authorized by the County for transactions with the Oregon Health Authority that involve County funds directly related to this Contract.
10. Contractor(s) that are not units of local government as defined in ORS 190.003 shall obtain, at Contractor's expense, and maintain in effect with respect to all occurrences taking place during the term of the Contract, insurance requirements as defined in the Contract and incorporated herein by this reference (**Exhibit E, Insurance**).
11. Contractor(s) that are not units of local government as defined in ORS 190.003, shall 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 not 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 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.

**12.** Contractor shall include sections 1 through 11, in substantially the form set forth above, in all permitted Contractor contracts under this Contract.

**13. Ownership of Intellectual Property.**

- a.** Except as otherwise expressly provided herein, or as otherwise required by state or federal law, OHA and the County will not own the right, title and interest in any intellectual property created or delivered by the Contractor in connection with the Services. With respect to that portion of the intellectual property that the Contractor owns, Contractor grants to OHA and the County a perpetual, worldwide, non-exclusive, royalty-free and irrevocable license, subject to any provisions in the Contract that restrict or prohibit dissemination or disclosure of information, to: (1) use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the intellectual property; (2) authorize third parties to exercise the rights set forth in Section 13.a.(1) on OHA and the County's behalf; and (3) sublicense to third parties the rights set forth in Section 13.a.(1).
  
- b.** If state or federal law requires that OHA or County grant to the United States a license to any intellectual property, or if state or federal law requires that OHA or the United States own the intellectual property, then Contractor shall execute such further documents and instruments as OHA may reasonably request in order to make any such grant or to assign ownership in the intellectual property created or delivered by Contractor in connection with the Services, OHA will grant a perpetual, worldwide, non-exclusive, royalty-free and irrevocable license, subject to any provisions in the Contract that restrict or prohibit dissemination or disclosure of information, to Contractor to use, copy distribute, display, build upon and improve the intellectual property.

**EXHIBIT I  
QUALIFIED SERVICE ORGANIZATION BUSINESS ASSOCIATE AGREEMENT**

This Qualified Service Organization Business Associate Agreement (“Agreement”) is entered into as of **January 1, 2020** (“Effective Date”) by and between **Clackamas County, a political subdivision of the State of Oregon, on behalf of its Health, Housing and Human Services, Behavioral Health Division** (“Covered Entity”) and **The Mental Health Association of Oregon** (“Business Associate”) in conformance with the Health Insurance Portability and Accountability Act of 1996 and its regulations (“HIPAA”), and Confidentiality of Substance Use Disorder Patient Records, 42 CFR Part 2 (“Confidentiality Rule”).

**RECITALS**

**Whereas**, the Covered Entity has engaged the services of the Business Associate as defined under 45 CFR §160.103 for or on behalf of the Covered Entity;

**Whereas**, the Covered Entity may wish to disclose Individually Identifiable Health Information to the Business Associate in the performance of services for or on behalf of the Covered Entity as described in a Services Agreement (“Services Agreement”);

**Whereas**, such information may be Protected Health Information (“PHI”) as defined by the HIPAA Rules promulgated in accordance with the Administrative Simplification provisions of HIPAA;

**Whereas**, the Parties agree to establish safeguards for the protection of such information;

**Whereas**, the Covered Entity and Business Associate desire to enter into this Agreement to address certain requirements under the HIPAA Rules **and** the Confidentiality Rule;

**Now, therefore**, the parties hereby agree as follows:

**SECTION I – DEFINITIONS**

- 1.1 “Breach” is any unauthorized acquisition, access, use or disclosure of Unsecured PHI, unless the Covered Entity demonstrates that there is a low probability that the PHI has been compromised. The definition of Breach excludes the following uses and disclosures:
  - 1.1.1 Unintentional access by a Covered Entity or Business Associate in good faith and within a Workforce member’s course and scope of employment or placement;
  - 1.1.2 Inadvertent one time disclosure between Covered Entity or Business Associate Workforce members; and
  - 1.1.3 The Covered Entity or Business Associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain the information.
- 1.2 “Covered Entity” shall have the meaning given to such term under the HIPAA Rules, including, but not limited to, 45 CFR §160.103.
- 1.3 “Designated Record Set” shall have the meaning given to such term under the HIPAA Rules, including, but not limited to 45 CFR §164.501.
- 1.4 “Disclose” or “disclosure” shall have the meaning given to such terms under the Confidentiality Rule, 42 CFR §2.11.
- 1.5 “Effective Date” shall be the Effective Date of this Agreement.
- 1.6 "Electronic Protected Health Information" or "Electronic PHI" shall have the meaning given to such term at 45 CFR §160.103, limited to information of the Covered Entity that the Business Associate creates, receives, accesses, maintains or transmits in electronic media on behalf of the Covered Entity under the terms and conditions of this Agreement.
- 1.7 “Health Care Operations” shall have the meaning given to such term under the HIPAA Rules, including, but not limited to, 45 CFR §164.501.
- 1.8 “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules codified at 45 CFR Part 160 and Part 164.



**The Mental Health Association of Oregon – Personal Services Contract (CMHP) #9319**

- 1.9 “Individual” shall have the meaning given to such term in 45 CFR §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).
- 1.10 “Individually Identifiable Health Information” shall have the meaning given to such term under the HIPAA Rules, including, but not limited to 45 CFR §160.103.
- 1.11 “Program” shall have the meaning given to such term under the Confidentiality Rule, 42 CFR §2.11.
- 1.12 “Protected Health Information” or “PHI” means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an Individual; the provision of health care to an Individual; or the past, present or future payment for the provision of health care to an Individual; and (ii) that identifies the Individual or with respect to which there is a reasonable basis to believe the information can be used to identify the Individual, and shall have the meaning given to such term under the HIPAA Rules, 45 CFR §160.103 and §164.501.
- 1.13 “Protected Information” shall mean PHI provided by the Covered Entity to Business Associate or created, maintained, transmitted or received by Business Associate on Covered Entity’s behalf.
- 1.14 “Qualified Service Organization” shall have the meaning defined under the Confidentiality Rule, 42 CFR §2.11.
- 1.15 “Required by Law” shall have the meaning given to such phrase in 45 CFR §164.103.
- 1.16 “Secretary” shall mean the Secretary of the Department of Health and Human Services or his or her designee.
- 1.17 “Security Incident” shall have the meaning given to such phrase in 45 CFR §164.304.
- 1.18 “Unsecured Protected Health Information” shall mean protected health information that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in accordance with 45 CFR §164.402.
- 1.19 Workforce means employees, volunteers, trainees, and other persons whose conduct, in the performance of work for a Covered Entity or Business Associate, is under the direct control of such Covered Entity or Business Associate, whether or not they are paid by the Covered Entity or Business Associate.

**SECTION II – OBLIGATIONS AND ACTIVITIES OF THE BUSINESS ASSOCIATE**

The Business Associate agrees to the following:

- 2.1 Not to use or further disclose PHI other than as permitted or required by this Agreement or as Required by Law;
- 2.2 To use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to Electronic PHI, to prevent use or disclosure of PHI other than as provided for by this Agreement;
- 2.3 To mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a use or disclosure of PHI by the Business Associate in violation of the requirements of this Agreement;
- 2.4 To immediately report to the Covered Entity any use or disclosure of PHI not provided for by this Agreement of which it becomes aware, including any Security Incident of which it becomes aware;
- 2.5 In accordance with 45 CFR §§164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any agent, including a subcontractor, that creates, receives, maintains, or transmits PHI on behalf of the Business Associate agrees in writing to the same restrictions, conditions and requirements that apply to the Business Associate with respect to such PHI. Notwithstanding the preceding language of this subsection, Business Associate acknowledges that PHI obtained by the Business Associate relating to individuals who may have been diagnosed as needing, or who have received, substance use disorder treatment services, diagnosis or referral for treatment shall be maintained and used only for the purposes intended under this Agreement and in conformity with all applicable provisions of the Confidentiality Rule. This information received from the Covered Entity, is protected by the Confidentiality Rule and therefore the Business Associate is specifically prohibited

**The Mental Health Association of Oregon – Personal Services Contract (CMHP) #9319**

- from re-disclosing such information to agents or subcontractors without specific written consent of the subject Individual;
- 2.6 To provide access, at the request of the Covered Entity, and in the time and manner designated by the Covered Entity, to PHI in a Designated Record Set, to the Covered Entity or, as directed by the Covered Entity, to the Individual or the Individual's designee as necessary to meet the Covered Entity's obligations under 45 CFR §164.524; provided, however, that this Section is applicable only to the extent the Designated Record Set is maintained by the Business Associate for the Covered Entity;
- 2.7 To make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR §164.526 at the request of the Covered Entity or an Individual, and in the time and manner designated by the Covered Entity; provided, however, that this Section is applicable only to the extent the Designated Record Set is maintained by the Business Associate for the Covered Entity;
- 2.8 To make internal practices, books and records, including policies and procedures on PHI, relating to the use and disclosure of PHI received from, or created or received by the Business Associate on behalf of, the Covered Entity available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary's determining the Covered Entity's and the Business Associate's compliance with the HIPAA Rules;
- 2.9 To document such disclosures of PHI and information related to such disclosures as would be required for the Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528;
- 2.10 To comply with the confidentiality, disclosure and re-disclosure requirements of the Confidentiality Rule as applicable;
- 2.11 To resist any efforts in judicial proceedings any efforts to obtain access to the PHI protected by the Confidentiality Rule except as expressly provided for in the Confidentiality Rule;
- 2.12 To provide to the Covered Entity or an Individual, in a time and manner designated by the Covered Entity, information collected in accordance with Section 2.9 of this Agreement, to permit the Covered Entity to respond to a request by an accounting of disclosures of PHI in accordance with 45 CFR §164.528;
- 2.13 That if it creates, receives, maintains, or transmits any Electronic PHI on behalf of the Covered Entity, it will implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic PHI, and it will ensure that any agents (including subcontractors) to whom it provides such electronic PHI agrees to implement reasonable and appropriate security measures to protect the PHI. The Business Associate will report to the Covered Entity any Security Incident of which it becomes aware;
- 2.14 To retain records related to the PHI hereunder for a period of six (6) years unless this Agreement is terminated prior thereto. In the event of termination of this Agreement, the provisions of Section V of this Agreement shall govern record retention, return or destruction;
- 2.15 To promptly notify the Covered Entity of a Breach of Unsecured PHI as soon as practicable, but in no case later than 10 calendar days, after the discovery of such Breach. A Breach shall be treated as discovered as of the first day on which such Breach is known, or by exercising reasonable diligence would have been known, to any person, other than the person committing the Breach, who is an employee, officer, or agent of Business Associate. The notification shall include, to the extent possible, the identification of each Individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, used, or disclosed during the Breach in addition to the information required in Section V. In addition, Business Associate shall provide the Covered Entity with any other available information that the Covered Entity is required to include in the notification to the individual under 45 CFR §164.404(c); and
- 2.16 To the extent Business Associate is to carry out one or more of the Covered Entity's obligations under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligations.

**SECTION III – THE PARTIES AGREE TO THE FOLLOWING PERMITTED USES AND DISCLOSURES BY THE BUSINESS ASSOCIATE:**

- a. The Covered Entity and the Business Associate agree that this Agreement constitutes a Qualified Service Organization Agreement as required by the Confidentiality Rule. Accordingly, information obtained by the Business Associate relating to Individuals who may have been diagnosed as needing, or who have received, substance use disorder treatment services, diagnosis or referral for treatment shall be maintained and used only for the purposes intended under this Agreement and in conformity with all applicable provisions of the Confidentiality Rule.
- b. Business Associate agrees to make uses and disclosures and requests for PHI consistent with the Covered Entity’s minimum necessary policies and procedures.
- c. Except as otherwise limited in this Agreement, the Business Associate may use or disclose PHI to perform functions, activities or services for, or on behalf of, the Covered Entity as specified in the Services Agreement, provided that such use or disclosure would not violate the Confidentiality or HIPAA Rules if done by the Covered Entity; and,
- d. Except as otherwise limited in this Agreement, the Business Associate may:
  - a. **Use for management and administration.** Use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate so long as such use is also permitted by the Confidentiality Rule; and,
  - b. **Disclose for management and administration.** Disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that disclosures are Required by Law, or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as Required by Law or for the purposes for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached. PHI that is also subject to the Confidentiality Rule cannot be disclosed to a third party except as permitted under the Confidentiality Rule.

**SECTION IV – NOTICE OF PRIVACY PRACTICES**

- 4.1 If requested, the Covered Entity shall provide the Business Associate with the notice of privacy practices that the Covered Entity produces in accordance with 45 CFR §164.520, as well as any changes to such notice. The Covered Entity shall (a) provide the Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect the Business Associate’s permitted or required uses and disclosures; (b) notify the Business Associate of any restriction to the use or disclosure of PHI that the Covered Entity has agreed to in accordance with 45 CFR §164.522, to the extent that such restrictions may affect the Business Associate’s use or disclosure of PHI; and (c) not request the Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA Rules if done by the Covered Entity, except as set forth in Section 3.3 above.

**SECTION V – BREACH NOTIFICATION REQUIREMENTS**

- 5.1 With respect to any Breach, the Covered Entity shall notify each individual whose Unsecured PHI has been, or is reasonably believed by the Covered Entity to have been, accessed, acquired, used, or disclosed as a result of such Breach, except when law enforcement requires a delay pursuant to 45 CFR §164.412. This notice shall be:
  - a. Without unreasonable delay and in no case later than 60 calendar days after discovery of a Breach.
  - b. By notice in plain language including and to the extent possible:

**The Mental Health Association of Oregon – Personal Services Contract (CMHP) #9319**

- 1) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
  - 2) A description of the types of Unsecured PHI that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
  - 3) Any steps Individuals should take to protect themselves from potential harm resulting from the Breach;
  - 4) A brief description of what the Covered Entity and/or Business Associate involved is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against any further Breaches; and,
  - 5) Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, web site, or postal address.
- c. By a method of notification that meets the requirements of 45 CFR §164.404(d).
  - d. Provided notice to the media when required under 45 CFR §164.406 and to the Secretary pursuant to 45 CFR §164.408.
- 5.2 Business Associate shall promptly provide any information requested by Covered Entity to provide the information described in Section 5.1.

**SECTION VI – TERM AND TERMINATION**

- 6.1 **Term.** The term of this Agreement shall be effective as of the date set forth above in the first paragraph and shall terminate when all of the PHI provided by the Covered Entity to the Business Associate, or created, maintained, transmitted or received by the Business Associate on behalf of the Covered Entity, is destroyed or returned to the Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
- 6.2 **Termination for Cause.** Upon the Covered Entity’s knowledge of a material breach of this Agreement by the Business Associate, the Covered Entity shall provide an opportunity for the Business Associate to cure the breach or end the violation. The Covered Entity shall terminate this Agreement and the Services Agreement if the Business Associate does not cure the breach or end the violation within the time specified by the Covered Entity, or immediately terminate this Agreement if cure is not reasonably possible.
- If the Business Associate fails to cure a breach for which cure is reasonably possible, the Covered Entity may take action to cure the breach, including but not limited to obtaining an injunction that will prevent further improper use or disclosure of PHI. Should such action be taken, the Business Associate agrees to indemnify the Covered Entity for any costs, including court costs and attorneys' fees, associated with curing the breach.
- Upon the Business Associate's knowledge of a material breach of this Agreement by the Covered Entity, the Business Associate shall provide an opportunity for the Covered Entity to cure the breach or end the violation. The Business Associate shall terminate this Agreement and Services Agreement if the Covered Entity does not cure the breach or end the violation within the time specified by the Business Associate, or immediately terminate this Agreement if the Covered Entity has breached a material term of this Agreement if cure is not reasonably possible.
- 6.3 **Effect of Termination.**
- a. **Return or Destruction of PHI.** Except as provided in Section 6.3(b), upon termination of this Agreement, for any reason, the Business Associate shall return, or if agreed to by the Covered Entity, destroy all PHI received from the Covered Entity, or created, maintained or received by the Business Associate on behalf of the Covered Entity and retain no copies. This provision shall apply to PHI that is in the possession of subcontractors or agents of the Business Associate.
  - b. **Return or Destruction of PHI Infeasible.** In the event that the Business Associate determines that returning or destroying PHI is infeasible, the Business Associate shall provide to the

Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction of the PHI is infeasible, the Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as the Business Associate maintains such PHI. In addition, the Business Associate shall continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to Electronic PHI to prevent use or disclosure of the PHI, for as long as the Business Associate retains the PHI.

## **SECTION VII – GENERAL PROVISIONS**

- 7.1 **Regulatory references.** A reference in this Agreement to the Confidentiality Rule, HIPAA Rules or a section in the HIPAA Rules means that Rule or Section as in effect or as amended from time to time.
- 7.2 **Compliance with law.** In connection with its performance under this Agreement, Business Associate shall comply with all applicable laws, including but not limited to laws protecting the privacy of personal information about Individuals.
- 7.3 **Amendment.** The Parties agree to take such action as is necessary to amend this Agreement from time to time. All amendments must be in writing and signed by both Parties.
- 7.4 **Indemnification by Business Associate.** Business Associate agrees to indemnify, defend and hold harmless the Covered Entity and its commissioners, employees, directors, officers, subcontractors, agents or other members of its workforce, each of the foregoing hereinafter referred to as “Indemnified Party,” against all actual and direct losses suffered by the Indemnified Party and all liability to third parties arising from or in connection with Business Associate’s breach of Section II and III of this Agreement. Accordingly, on demand, Business Associate shall reimburse any Indemnified Party for any and all actual and direct losses, liabilities, fines, penalties, costs or expenses (including reasonable attorneys’ fees) which may for any reason be imposed upon any Indemnified Party by reason of any suit, claim, action, proceeding or demand by any third party which results for Business Associate’s breach hereunder. The obligation to indemnify any Indemnified Party shall survive the expiration or termination of this Agreement for any reason.
- 7.5 **Survival.** The respective rights and obligations of Business Associate under Section II of this Agreement shall survive the termination of the Services Agreement and this Agreement.
- 7.6 **Interpretation.** Any ambiguity in this Agreement shall be resolved to permit Covered Entity to first comply with the Confidentiality Rule and second to comply with the HIPAA Rules.

(Signature Page for QSOBAA Follows)

**SIGNATURE PAGE FOR QUALIFIED SERVICE ORGANIZATION BUSINESS ASSOCIATE AGREEMENT**

The Parties hereto have duly executed this Agreement as of the Effective Date as defined here above.

**Business Associate**

**THE MENTAL HEALTH ASSOCIATION  
OF OREGON**

**Covered Entity**

**CLACKAMAS COUNTY**

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Richard Swift

Health, Housing and Human Services

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name / Title (Printed)

February 27, 2020

Board of County Commissioners  
Clackamas County

Members of the Board:

**Approval of a Personal Services Contract with Folk-Time, Inc. for Adult Peer Support  
Services for the Safety Net Program**

Purpose/Outcome	Provides peer support services for individuals and families access Safety Net Services through the Clackamas Mental Health Center.
Dollar Amount and fiscal Impact	Contract maximum payment is \$759,756.80. Initial term: \$319,910.80; renewal term, if awarded: \$439,846.00.
Funding Source	No County General Funds are involved. State of Oregon, Community Mental Health Program funds.
Duration	Contracting through June 30, 2021 with an optional two (2) year extension.
Previous Board Action/Review	N/A
Strategic Plan Alignment	1. Provide coordination, assessment, outreach, and recovery services to Clackamas County residents experiencing mental health and addiction distress so they can achieve their own recovery goals 2. Ensure safe, healthy and secure communities.
Counsel Approval	February 19, 2020
Contact Person	Mary Rumbaugh, Director – Behavioral Health Division 503-742-5305
Contract No.	County Contract #2103 / BH Contract #9317

**BACKGROUND:**

The Behavioral Health Division of the Health, Housing & Human Services Department requests the approval of a Personal Service Contract with Folk-Time, Inc. for Peer Delivered Services for the Safety Net Program. Services support individuals experiencing mental health crisis who may also have an addiction and/or be under the influence of substances. Peers assist and support individuals in navigating service systems and identifying resources.

Folk-Time, Inc. is a nonprofit behavioral health agency that fosters healing by connecting individuals who share the experience of living with mental illness through peer support and community based activities. Behavioral Health has collaborated with Folk-Time, Inc. since 2010 for behavioral health services.

This Contract is effective January 1, 2020 and continues through June 30, 2021, with an option to extend for an additional two (2) years. The maximum value for the initial term of the Contract is \$319,910.80, should the option to extend be exercised the maximum value of the Contract is \$759,756.80.

**PROCUREMENT PROCESS:**

In accordance with Local Contract Review Board Rule C-047-0260 and applicable ORS, on July 15, 2019, the Clackamas County Procurement Office published a Request for Proposals (RFP) for Behavioral Health Peer Delivered Services. The RFP included this project and six others.

Proposers were allowed to bid on one or more projects included in the RFP. The RFP closed on August 1, 2019. This project received one proposal. An evaluation committee scored the proposal in accordance with the RFP scoring criteria and recommended that Folk-Time, Inc. be awarded this contract. Notice of Intent to Award was published on ORPIN September 25, 2019, and no protests were received.

*Healthy Families. Strong Communities.*

**RECOMMENDATION:**

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

Respectfully Submitted,

Richard Swift, Director  
Health, Housing & Human Services Department

Placed on the board agenda of \_\_\_\_\_ by the Procurement Division.





**CLACKAMAS COUNTY  
PERSONAL SERVICES CONTRACT  
County Contract # 2103 / BH Contract #9317**

This Personal Services Contract (this “Contract”) is entered into between **Folk-Time, Inc.** (“Contractor”), and Clackamas County, a political subdivision of the State of Oregon (“County”) on behalf of its Health Housing and Human Services Department, Behavioral Health Division.

**ARTICLE I.**

- 1. Effective Date and Duration.** This Contract shall become effective on **January 1, 2020** and upon signature of both parties. County and Contractor acknowledge that Work under the Contract was performed prior to the effective date. County and Contractor hereby ratify and approve Work performed prior to execution of the Contract, but not earlier than January 1, 2020. Provided, however, this ratification does not constitute a waiver of any right, title, claim, defense, or other action County may have against Contractor arising out of or related to the previously-performed Work. Unless earlier terminated or extended, this Contract shall expire on June 30, 2021. Subject to the approval of both parties, this Contract includes one (1) optional renewal term of two (2) years.
- 2. Scope of Work.** Contractor shall provide the following personal services: Adult Peer Delivered Services - Safety Net Services (“Work”), further described in **Exhibit B.**
- 3. Consideration.** The County agrees to pay Contractor, from available and authorized funds, a sum not to exceed **three hundred nineteen thousand nine hundred ten dollars and eighty cents (\$319,910.80)**, for accomplishing the Work required by this Contract during the initial term, which expires on June 30, 2021, and the total contract value including the two (2) year renewal term shall not exceed **seven hundred fifty-nine thousand seven hundred fifty-six dollars and eighty cents (\$759,756.80)**. Consideration rates are on a fixed rate basis as specified in **Exhibit D.** If any interim payments to Contractor are made, such payments shall be made only in accordance with the schedule and requirements in **Exhibit D.**
- 4. Invoices and Payments.** Contractor shall submit monthly invoices for Work performed, as more fully described in **Exhibit D.**
- 5. Contract Documents.** This Contract consists of the following selected documents, which are attached and incorporated by reference herein:

- Contract
- Exhibit A – Definitions
- Exhibit B – Scope of Work
- Exhibit C – CMHP Service Element
- Exhibit D – Compensation
- Exhibit E – Insurance
- Exhibit F – OHP Required Federal Terms and Conditions
- Exhibit G – CMHP Required Provider Contract Provisions
- Exhibit H – Business Associate Agreement (BAA)

Exhibit I – Qualified Service Organization Business Associate Agreement (QSOBAA)

**6. Contractor and County Contact Information**

Folk-Time, Inc.	Clackamas County – Behavioral Health Division
Address: 232 SE 80th Avenue Portland, OR 97215	Address: 2051 Kaen Road, Suite 154 Oregon, City, OR 97045
Phone: 503-238-6428	Phone: 503-742-5335
Email: rcseko@folktime.org	Email: BHContracts@clackamas.us

Payment information will be reported to the Internal Revenue Service (“IRS”) under the name and taxpayer ID number submitted. (See I.R.S. 1099 for additional instructions regarding taxpayer ID numbers.) Information not matching IRS records will subject Contractor payments to backup withholding.

**ARTICLE II.**

1. **ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence, in accordance with generally accepted accounting procedures and practices, sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. County and their duly authorized representatives shall have access to the books, documents, papers, and records of Contractor, which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Contractor shall maintain such books and records for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.
2. **AVAILABILITY OF FUTURE FUNDS.** Any continuation or extension of this Contract after the end of the fiscal period in which it is written is contingent on a new appropriation for each succeeding fiscal period sufficient to continue to make payments under this Contract, as determined by the County in its sole administrative discretion.
3. **CAPTIONS.** The captions or headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Contract.
4. **COMPLIANCE WITH APPLICABLE LAW.** Contractor shall comply with all applicable federal, state and local laws, regulations, executive orders, and ordinances, as such may be amended from time to time. Contractor shall further comply with any and all terms, conditions, and other obligations as may be required by applicable State and Federal agencies providing funding for performance under this Contract, whether or not specifically referenced herein.
5. **COUNTERPARTS.** This Contract may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
6. **GOVERNING LAW.** This Contract, and all rights, obligations, and disputes arising out of it, shall be governed and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without regard to principles of conflicts of law. Any claim, action, or suit between County and Contractor that arises out of or relates to the performance of this Contract shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States

District Court for the District of Oregon. In no event shall this section be construed as a waiver by the County of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. Contractor, by execution of this Contract, hereby consents to the personal jurisdiction of the courts referenced in this section.

- 7. RESPONSIBILITY FOR DAMAGES; INDEMNITY.** Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, the conduct of Work, or from any act, omission, or neglect of Contractor, its subcontractors, agents, or employees. The Contractor agrees to indemnify, hold harmless and defend the County, and its officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees, subcontractors, or agents. However, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of County or any department of County, nor purport to act as legal representative of County or any of its departments, without first receiving from the Clackamas County Counsel's Office authority to act as legal counsel for County, nor shall Contractor settle any claim on behalf of County without the approval of the Clackamas County Counsel's Office. County may, at its election and expense, assume its own defense and settlement.

Contractor shall indemnify, hold harmless and defend the State of Oregon, and its officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees, subcontractors, or agents.

- 8. INDEPENDENT CONTRACTOR STATUS.** The service(s) to be rendered under this Contract are those of an independent contractor. Although the County reserves the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, County cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work. Contractor is not to be considered an agent or employee of County for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; and (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to County employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits.
- 9. INSURANCE.** Contractor shall secure at its own expense and keep in effect during the term of the performance under this Contract the insurance required and minimum coverage indicated in **Exhibit E**.
- 10. LIMITATION OF LIABILITIES.** This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent. Except for liability arising under or related to Article II, Section 13 or Section 21 neither party shall be liable for (i) any indirect, incidental, consequential or special damages under this Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms.

- 11. NOTICES.** Except as otherwise provided in this Contract, any required notices between the parties shall be given in writing by personal delivery, email, or mailing the same. Any communication or notice mailed shall be deemed to be given five (5) days after mailing, and immediately upon personal delivery, or within 2 hours after the email is sent during County’s normal business hours (Monday – Thursday, 7:00 a.m. to 6:00 p.m.) (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered.
- 12. OWNERSHIP OF WORK PRODUCT.** All work product of Contractor that results from this Contract (the “Work Product”) is the exclusive property of County. County and Contractor intend that such Work Product be deemed “work made for hire” of which County shall be deemed the author. If for any reason the Work Product is not deemed “work made for hire,” Contractor hereby irrevocably assigns to County all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark or trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as County may reasonably request in order to fully vest such rights in County. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications. Notwithstanding the above, County shall have no rights in any pre-existing Contractor intellectual property provided to County by Contractor in the performance of this Contract except to copy, use and re-use any such Contractor intellectual property for County use only. If this Contract is terminated prior to completion, and the County is not in default, County, in addition to any other rights provided by this Contract, may require the Contractor to transfer and deliver all partially completed Work Product, reports or documentation that the Contractor has specifically developed or specifically acquired for the performance of this Contract.
- 13. REPRESENTATIONS AND WARRANTIES.** Contractor represents and warrants to County that (A) Contractor has the power and authority to enter into and perform this Contract; (B) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (C) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work; (D) Contractor is an independent contractor as defined in ORS 670.600; and (E) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.
- 14. SURVIVAL.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Article II, Sections 1, 6, 7, 11, 13, 14, 16 and 21, and all other rights and obligations which by their context are intended to survive. However, such expiration shall not extinguish or prejudice the County’s right to enforce this Contract with respect to: (a) any breach of a Contractor warranty; or (b) any default or defect in Contractor performance that has not been cured.
- 15. SEVERABILITY.** If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.
- 16. SUBCONTRACTS AND ASSIGNMENTS.** Contractor shall not enter into any subcontracts for any of the Work required by this Contract, or assign or transfer any of its interest in this Contract by operation of law or otherwise, without obtaining prior written approval from the County, which shall be granted or denied in the County’s sole discretion. In addition to any provisions the County may

require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this Article II, Sections 1, 7, 8, 13, 16 and 27 as if the subcontractor were the Contractor. County's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.

- 17. SUCCESSORS IN INTEREST.** The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- 18. TAX COMPLIANCE CERTIFICATION.** The Contractor shall comply with all federal, state and local laws, regulation, executive orders and ordinances applicable to this Contract. Contractor represents and warrants that it has complied, and will continue to comply throughout the duration of this Contract and any extensions, with all tax laws of this state or any political subdivision of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318. Any violation of this section shall constitute a material breach of this Contract and shall entitle County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract or applicable law.
- 19. TERMINATIONS.** A) This Contract may be terminated by mutual agreement of the parties or by the County for one of the following reasons: (i) for convenience upon thirty (30) days written notice to Contractor; or (ii) at any time the County fails to receive funding, appropriations, or other expenditure authority as solely determined by the County. Upon receipt of written notice of termination from the County, Contractor shall immediately stop performance of the Work. (B) if Contractor breaches any Contract provision or is declared insolvent, County may terminate after thirty (30) days written notice with an opportunity to cure. Upon termination of this Contract, Contractor shall deliver to County all documents, information, works-in-progress and other property that are or would be deliverables had the Contract Work been completed. Upon County's request, Contractor shall surrender to anyone County designates, all documents, research, objects or other tangible things needed to complete the Work.
- 20. REMEDIES.** If terminated by the County due to a breach by the Contractor, then the County shall have any remedy available to it in law or equity. If this Contract is terminated for any other reason, Contractor's sole remedy is payment for the goods and services delivered and accepted by the County, less any setoff to which the County is entitled.
- 21. NO THIRD PARTY BENEFICIARIES.** County and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.
- 22. TIME IS OF THE ESSENCE.** Contractor agrees that time is of the essence in the performance this Contract.
- 23. FOREIGN CONTRACTOR.** If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.
- 24. FORCE MAJEURE.** Neither County nor Contractor shall be held responsible for delay or default caused by events outside the County or Contractor's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, Contractor shall make all reasonable efforts to

remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

**25. WAIVER.** The failure of County to enforce any provision of this Contract shall not constitute a waiver by County of that or any other provision.

**26. PUBLIC CONTRACTING REQUIREMENTS.** Pursuant to the public contracting requirements contained in Oregon Revised Statutes (“ORS”) Chapter 279B.220 through 279B.235, Contractor shall:

- a. Make payments promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the work provided for in the Contract.
- b. Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of the Contract.
- c. Not permit any lien or claim to be filed or prosecuted against County on account of any labor or material furnished.
- d. Pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
- e. If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a subcontractor by any person in connection with the Contract as such claim becomes due, the proper officer representing Clackamas County may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due Contractor by reason of the Contract.
- f. As applicable, the Contractor shall pay employees for work in accordance with ORS 279B.235, which is incorporated herein by this reference. The Contractor shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract, and failure to comply is a breach entitling County to terminate this Contract for cause.
- g. If the Work involves lawn and landscape maintenance, Contractor shall salvage, recycle, compost, or mulch yard waste material at an approved site, if feasible and cost effective.

**27. ABUSE REPORTING.** Contractor shall comply with all processes and procedures of child abuse (ORS 419B.005 – 419B.050), mentally ill and developmentally disabled abuse (ORS 430.731 – 430.768 and OAR 943-045-0250 through 493-045-0370) and elder abuse reporting laws (ORS 124.050 – 124.092) as if Contractor were a mandatory abuse reporter. If Contractor is not a mandatory reporter by statute, these reporting requirements shall apply during work hours only. Contractor shall immediately report to the proper State or law enforcement agency circumstances (and provide such other documentation as may be relevant) supporting reasonable cause to believe that any person has abused a child, mentally ill or developmentally disabled adult or an elderly person, or that any such person has been abused.

**28. CONFIDENTIALITY.** Contractor acknowledges that it and its employees and agents may, in the course of performing their obligations under this Contract, be exposed to or acquire information that the County desires or is required to maintain as confidential. Any and all information of any form obtained by Contractor or its employees or agents in the performance of this Contract, including but not limited to Personal Information (as “Personal Information” is defined in ORS 646A.602(11), shall be deemed to be confidential information of the County (“Confidential Information”). Any reports or other documents or items (including software) which result from the use of the Confidential Information by Contractor shall be treated with respect to confidentiality in the same manner as the Confidential Information.

Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever

(other than in the performance of this Contract), and to advise each of its employees and agents of their obligations to keep Confidential Information confidential.

Contractor agrees that, except as directed by the County, Contractor will not at any time during or after the term of this Contract, disclose, directly or indirectly, any Confidential Information to any person, and that upon termination or expiration of this Contract or the County's request, Contractor will turn over to the County all documents, papers, records and other materials in Contractor's possession which embody Confidential Information. Contractor acknowledges that breach of this Contract, including disclosure of any Confidential Information, or disclosure of other information that, at law or in good conscience or equity, ought to remain confidential, will give rise to irreparable injury to the County that cannot adequately be compensated in damages. Accordingly, the County may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of the County and are reasonable in scope and content.

Contractor agrees to comply with all reasonable requests by the County to ensure the confidentiality and nondisclosure of the Confidential Information, including if requested and without limitation: (a) obtaining nondisclosure agreements, in a form approved by the County, from each of Contractor's employees and agents who are performing services, and providing copies of such agreements to the County; and (b) performing criminal background checks on each of Contractor's employees and agents who are performing services, and providing a copy of the results to the County.

Contractor shall report, either orally or in writing, to the County any use or disclosure of Confidential Information not authorized by this Contract or in writing by the County, including any reasonable belief that an unauthorized individual has accessed Confidential Information. Contractor shall make the report to the County immediately upon discovery of the unauthorized disclosure, but in no event more than two (2) business days after Contractor reasonably believes there has been such unauthorized use or disclosure. Contractor's report shall identify: (i) the nature of the unauthorized use or disclosure, (ii) the Confidential Information used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Contractor has taken or shall take to prevent future similar unauthorized use or disclosure. Contractor shall provide such other information, including a written report, as reasonably requested by the County.

Notwithstanding any other provision in this Contract, Contractor will be responsible for all damages, fines and corrective action (including credit monitoring services) arising from disclosure of such Confidential Information caused by a breach of its data security or the confidentiality provisions hereunder.

The provisions in this Section shall operate in addition to, and not as limitation of, the confidentiality and similar requirements set forth in the rest of the Contract, as it may otherwise be amended. Contractor's obligations under this Contract shall survive the expiration or termination of the Contract, as amended, and shall be perpetual.

**29. CRIMINAL BACKGROUND CHECK REQUIREMENTS.** Contractor shall be required to have criminal background checks (and in certain instances fingerprint background checks) performed on all employees, agents, or subcontractors that perform services under this Contract. Only those employees, agents, or subcontractors that have met the acceptability standards of the County may perform services under this Contract or be given access to Personal Information, Confidential Information or access to County facilities.

**30. FURTHER ASSURANCES.** Contractor agrees to take all steps, and execute and deliver any and all necessary written instruments, to perform under this Contract including, but not limited to, executing all additional documentation necessary for County to comply with applicable State or Federal funding requirements.

**31. MERGER.** THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER REFERENCED THEREIN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY ALL PARTIES. ANY SUCH AMENDMENT, CONSENT, OR WAIVER SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. CONTRACTOR, BY THE SIGNATURE HERETO OF ITS AUTHORIZED REPRESENTATIVE, IS AN INDEPENDENT CONTRACTOR, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS CONTRACT, AND CONTRACTOR AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

[Signature page follows]



**SIGNATURE PAGE**

By their signatures below, the parties to this Contract agree to the terms, conditions, and content expressed herein.

**FOLK-TIME, INC.**

\_\_\_\_\_  
Authorized Signature    Date

\_\_\_\_\_  
Name / Title (Printed)

527094-83  
\_\_\_\_\_  
Oregon Business Registry #

Domestic Nonprofit Corporation / Oregon  
\_\_\_\_\_  
Entity Type / State of Formation

**COUNTY OF CLACKAMAS  
BOARD OF COMMISSIONERS**

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

**Signing on behalf of the Board:**

\_\_\_\_\_  
Richard Swift, Director    Date  
Health, Housing and Human Services

Approved as to form:

\_\_\_\_\_  
County Counsel    Date

**EXHIBIT A  
DEFINITIONS**

Whenever used in this Contract, the following terms shall have the meanings set forth below:

Allowable Costs: Costs described in OMB Circular A-87 except to the extent such costs are limited or excluded by other provisions of this Contract.

AMH: State of Oregon, Department of Human Services, Addictions and Mental Health Division (now known as the Department of Human Services of the State of Oregon [DHS]).

CCO: Coordinated Care Organization is an entity that has been certified as meeting the criteria adopted by the Oregon Health Authority under ORS 414.625 to be accountable for care management and to provide integrated and coordinated health care services.

Contractor: The entity contracted by the County.

County: Clackamas County Behavioral Health Division.

Covered Services: Medically appropriate services specified in OAR 410-141-3120, “Operations and Provision of Health Services” and limited in accordance with OAR 410-141-3420, “Billing and Payment” for OHP Members. The term “Covered Services” may be expanded, limited, or otherwise changed pursuant to the Clackamas County Health Share of Oregon/Clackamas Participation Agreement and OARs. Covered Services may also refer to authorized services provided to uninsured, indigent clients.

Department: DHS (formally AMH) contracts with County to establish and finance community mental health and addition programs; County, in turn, subcontracts certain services to Contractor.

DHS: the Department of Human Services of the State of Oregon (formerly known as the Addictions & Mental Health Division [AMH]).

Federal Funds: Funds paid to Contractor under this Contract that are received from an agency, instrumentality or program of the Federal government of the United States.

Health Share of Oregon: A Coordinated Care Organization (CCO) serving Oregon Health Plan enrollees of Clackamas, Multnomah, and Washington Counties.

Individual: An individual accessing publicly funded behavioral health services who is either an OHP Member or is determined eligible for services as an uninsured, indigent individual.

Medicaid: Federal funds received by OHA under the Title XIX of the Social Security Act and Children’s Health Insurance Program Funds administered jointly with Title XIX funds as part of the State medical assistance program by OHA.

Mental Health Services: Treatment services for individuals diagnosed with serious mental health illness, or other mental or emotional disturbance posing a danger to the health and safety of themselves or others.

Misexpenditure: Money, other than an overexpenditure disbursed to Contractor by County under this Contract and expended by Contractor that:

- (a) is identified by the Federal government as expended contrary to applicable statutes, rules, OMB Circulars or any other authority that governs the permissible expenditure of such money, for which the Federal government has requested reimbursement by the State of Oregon and whether in the form

**Folk-Time, Inc. – Personal Services Contract (OHP) #9317**

of a Federal determination of improper use of Federal funds, a Federal notice of disallowance, or otherwise; or

- (b) is identified by the County, State of Oregon or OHA as expended in a manner other than that permitted by this Contract, including without limitation, any money expended by Contractor, contrary to applicable statutes, rules, OMB Circulars or any other authority that governs the permissible expenditure of such money; or
- (c) is identified by the County, State of Oregon or OHA as expended on the delivery of a service that did not meet the standards and requirements of this Contract with respect to that service.

Measures and Outcomes Tracking System (MOTS): the DHS (formally AMH) data system that stores client data submitted by Contractor and/or County.

OAR: Oregon Administrative Rules duly promulgated by the Oregon Health Authority and as amended from time to time.

OHA: The State of Oregon, acting by and through its Oregon Health Authority.

OHP Member: An individual found eligible by a division of the Oregon Department of Human Services to receive services under the OHP (Oregon Health Plan) Medicaid Demonstration Project or State Children's Health Insurance Program and who is enrolled with County as Health Share of Oregon/Clackamas.

Oregon Web Infrastructure for Treatment Services (OWITS): Is 1) an optional free electronic health records system available to Counties and their Providers to submit the MOTS data, and 2) a system to manage the DSH (formally AMH) services.

Primary Source Verification: Verification from the original source of a specific credential (education, training, licensure) to determine the accuracy of the qualifications of an individual health care practitioner. Examples of primary source verification include, but are not limited to, direct correspondence, telephone verification and internet verifications.

Third Party Resources: Any individual, entity, or program that is, or may be, liable to pay all or part of the cost of any Covered Service furnished to an OHP Member, including but not limited to: private health insurance or group health plan; employment-related health insurance; medical support from absent parents; workers' compensation; Medicare; automobile liability insurance; other federal programs such as Veteran's Administration, Armed Forces Retirees and Dependent Act, Armed Forces Active Duty and Dependents Military Medical Benefits Act, and Medicare Parts A and B; another state's Title XIX, Title XXI or state-funded Medical Assistance Program; and personal estates.

Valid Claim: An invoice, in the form of a CMS 1500 claim form, submitted for payment of covered health services rendered to an eligible client that is submitted within the required 120 days from the date of service or discharge and that can be processed without obtaining additional information from the provider of the service or from a third party. A valid claim is synonymous with the federal definition of a clean claim as defined in 42 CFR 447.45(b).

**EXHIBIT B  
SCOPE OF WORK**

**Background**

As part of Clackamas County’s Behavioral Health Redesign, which began in 2009, Clackamas Behavioral Health Division committed to the development and implementation of a Peer Delivered Services System of Care for children, families, transition age youth, and adults receiving mental health and addiction services.

The term “peer” refers to a person who self-identifies as an individual who has lived experience of a mental health condition and/or an addiction and is successfully living in recovery. Peers provide support to an individual who has similar lived experiences. Peer support services are developed by peers for peers.

Family peer support refers to support activities provided by a person who has had similar lived experience raising a child who has experienced a mental health condition and/or addiction. The support services provided have been developed by family members for family members.

The supports provided are defined by the person/family asking for support. The individual/family defines their interests and goals and sets tasks to achieve those goals. The peer provides the support needed to complete those tasks and achieve the goals. Peer support services are designed to be flexible and community-based to meet the unique needs of each individual/family.

**Statement of Work**

Contractor shall:

1. Provide:
  - a. 2.5 FTE Peer Support Specialists
  - b. 0.6 FTE Peer Supervisor
2. Provide peer support services to the following population(s):
  - a. Individuals accessing Safety Net Services through Clackamas Mental Health Center (Clackamas MHC), located at 11211 SE 82<sup>nd</sup> Avenue, Suite O, Happy Valley, OR, 97086.
3. Assist and support individuals and families in navigating service systems and identifying resources.
4. Assist individuals in accessing substance use/abuse treatment programs, support groups, and other resources in the community at the individual’s request.
5. Provide referrals to other peer support resources as appropriate or requested by the individual.
6. Assist in identifying natural supports within the individual’s community.
7. Write a brief note describing support service provided and any follow up support to be provided.
8. Provide administrative and operational oversight of Peer Support staff that includes:
  - a. Training and continuing education
  - b. Schedule coordination
  - c. Supervision
9. Participate in appropriate system partner and/or COUNTY behavioral health division meetings.
10. Participate in COUNTY technical assistance activities to expand and strengthen the peer delivery system.
11. Perform exclusion list checks at hire and monthly of all employees, contractors, volunteers, interns, and any other persons providing, arranging, or paying for behavioral health services paid in whole or in part with Medicaid dollars, against the Office of Inspectors (OIG) General Exclusions Database and the System for Award Management (SAM) Exclusions Database. Provider will maintain monthly verification of this check.

12. Ensure that employees and Contractor’s employees and subcontractors, if permitted, maintain active licenses/certifications via a monitoring process with the licensing board including OHA’s Traditional Health Worker Registry.

**Standards of Work**

1. Work in collaboration with the County to promote a recovery oriented support system that focuses on hope, choice, personal responsibility, and self-determination.
2. Reinforce the values and culture of peer support through education and the modeling of strong support skills.
3. Use a whole health approach, not only addressing issues of mental health and substance use, but spiritual and physical health as requested by the individual served.

**Reporting Requirements**

Contractor shall prepare and submit quarterly summary reports on Contract activities no later than thirty (30) calendar days after the end of the quarter.

<b>Reporting Schedule</b>		
	<b>Reporting Period</b>	<b>Report Due</b>
<b>1<sup>st</sup> Report</b>	January 1 – March 31	No later than April 30
<b>2<sup>nd</sup> Report</b>	April 1 – June 30	No later than July 30
<b>3<sup>rd</sup> Report</b>	July 1 – September 30	No later than October 30
<b>4<sup>th</sup> Report</b>	October 1 – December 31	No later than January 30

**County Reporting Requirements (Survey Monkey Report)**

People Served:

1. Total number of individuals served each quarter.
2. Number of new individuals served each quarter.
3. Number of individuals that concluded services each quarter.
4. Number of “inappropriate” referrals this quarter (in need of more specialized support ie: LGBTQQ, youth vs. adult support, need for CRM services vs. mental health PSS/PWS, capacity, etc.)
  - a. Why was a new peer program needed?
  - b. Where was the new referral sent?

Experience of Support Services:

1. Engagement rate for individuals/families in support services (determined by number of individuals who had at least two (2) “kept” appointments/contacts with their PSS/PWS within six (6) weeks of referral)
2. Percentage of individuals receiving support that felt their overall wellness (whole health) was improved since working with a peer.
3. Percentage of individuals receiving support that felt their quality of life has improved since working with a peer.
4. Percentage of individuals that reported an increase in natural supports since working with a peer.
5. Percentage of individuals that report feeling accepted in their community since working with a peer.
6. Percentage of individuals that reported they would have returned to a higher level of care if not for peer support.
  - a. If an individual returned to a higher level of care, what was accessed (see Survey Monkey reporting tool)

**Folk-Time, Inc.** – Personal Services Contract (OHP) #9317

Community Supports and Workforce Development:

1. Number of support groups provided to individuals served
  - a. Number of people attending support groups
2. Number of workshops/educational opportunities for people served
  - a. Number of people attending workshops/educational opportunities
3. Number of outreach activities to potential referral sources
4. Number of program staff attending trainings, continuing education courses

**EXHIBIT D  
COMPENSATION**

- a. Payment for all Work performed under this Contract shall be subject to the provisions of ORS 293.462 and shall not exceed the total maximum sum of **\$759,756.80**.

Contractor shall be compensated on a fixed rate basis of **\$17,772.82** per month for the Contract's eighteen (18) month initial term. Should the renewal option be exercised, the fixed rate shall be **\$18,326.92** per month for the resulting twenty-four (24) month term.

- b. Contractor shall submit **monthly invoices by the 10<sup>th</sup> day of the month** following the month Services were provided. The invoice shall include:

BH Contract #9317,  
Month of service,  
Total amount due for all Services provided during the month, and  
Total amount billed to date by Contractor prior to the current invoice.

If Contractor fails to present invoices in proper form within sixty (60) calendar days after the end of the month in which the services were rendered, Contractor waives any rights to present such invoice thereafter and to receive payment therefor.

All invoices and supporting documentation shall be sent by email or mail to:

[BHAP@clackamas.us](mailto:BHAP@clackamas.us) and [NCaster@clackamas.us](mailto:NCaster@clackamas.us)

Alternatively, invoices and supporting documentation may be sent by mail to:

Clackamas County Behavioral Health Division  
Accounts Payable  
2051 Kaen Road, Suite #154  
Oregon City, Oregon 97045

When submitting electronically, designate Contractor name and BH Contract #9317 in the subject of the email.

- c. Payments shall be made to Contractor, within thirty (30) days, following the County's review and approval of invoices submitted by Contractor. Contractor shall not submit invoices for, and the County will not pay, any amount in excess of the maximum compensation amount set forth above. If this maximum compensation amount is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment.

**EXHIBIT E  
INSURANCE**

During the term of this Contract, Contractor shall maintain in full force at its own expense, each insurance noted below:

**1. Workers Compensation.** Contractor, its subcontractors, if any, and all employers providing work, labor, or materials under this Contract are subject employers under the Oregon Workers' Compensation Law, and shall either comply with ORS 656.017, which requires said employers to provide workers' compensation coverage that satisfies Oregon law for all their subject workers, or shall comply with the exemption set out in ORS 656.126. Contractors shall maintain employer's liability insurance with limits of \$500,000 each accident, \$500,000 disease each employee, and \$500,000 each policy limit.

**2. Professional Liability.**  **Required by County**  **Not required by County**

Professional Liability insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each claim, incident, or occurrence, with an annual aggregate limit of \$2,000,000. This is to cover damages because of personal injury, bodily injury, death, or damage to property caused by error, omission or negligent acts related to the professional services to be provided under this Contract. The policy must provide extending reporting period coverage for claims made within two years after the contract is completed.

If this box is checked Professional Liability limits shall be \$2,000,000 per occurrence and \$4,000,000 in annual aggregate.

**3. General Liability.**  **Required by County**  **Not required by County**

General Liability insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each claim, incident, or occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage for the protection of the **County and the State of Oregon, and its officers, elected officials, agents, and employees.** It shall include contractual liability coverage for the indemnity provided under this Contract.

If this box is checked General Liability limits shall be \$2,000,000 per occurrence and \$4,000,000 in annual aggregate for bodily injury/death, and \$200,000 per occurrence and \$600,000 annual aggregate for property damage.

**4. Automobile Liability.**  **Required by County**  **Not required by County**

**Commercial Automobile Liability** insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each accident for Bodily Injury, Death, and Property Damage, including coverage for owned, hired, or non-owned vehicles, as applicable.

**Commercial Automobile Liability** insurance limits shall be \$2,000,000 per occurrence and \$4,000,000 in annual aggregate for bodily injury/death, and \$200,000 per occurrence and \$600,000 annual aggregate for property damage.

**Personal Automobile Liability** insurance limits shall be not less than \$250,000/occurrence, \$500,000/aggregate, and \$100,000/property damage.

**5. Physical Abuse and Molestation Liability.**  **Required by County**  **Not required by County**



Physical Abuse and Molestation Liability insurance with a combined single limit of not less than \$1,000,000 each claim, incident, or occurrence, with an annual aggregate limit of \$2,000,000. Coverage shall be provided through either general liability or professional liability coverage. Proof of Sex Abuse/Molestation insurance coverage must be provided.

6. **Privacy and Network Security.**  **Required by County**  **Not required by County**

Privacy and Network Security coverages shall be obtained and maintained to provide protection against liability for (a) system attack; (b) denial or loss of service attacks; (c) spread of malicious software code; (d) unauthorized access and use of computer systems; and (e) liability from the loss or disclosure of confidential data with limit of \$1,000,000 per claim/annual aggregate.

If this box is checked Privacy and Network Security limit shall be at least \$4,000,000.

7. **Additional Insured Provision.** The insurance, other than Professional Liability (except to the extent it only applies to Commercial General Liability exposures), Workers' Compensation, Personal Automobile Liability and Pollution Liability Insurance, shall include **Clackamas County and the State of Oregon, and their officers, elected officials, agents, and employees** as an additional insured.

8. **Primary Coverage Clause.** Contractor's insurance shall apply as primary and will not seek contribution from any insurance or self-insurance maintained by, or provided to, the additional insureds listed above. This must be noted on the insurance certificate.

9. **Cross-Liability Clause.** A cross-liability clause or separation of insureds condition will be included in all general liability, professional liability, pollution and errors and omissions policies required by this Contract.

10. **"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 Contract, for a minimum of twenty-four (24) months following the later of: (i) the Contractor's completion and County's acceptance of all Services required under the Provider Contract; or (ii) the expiration of all warranty periods provided under the Contract. 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 County may grant approval of the maximum "tail" coverage period reasonably available in the marketplace. If County approval is granted, the Contractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.

11. **Self-insurance.** Contractor may fulfill one or more of its insurance obligation herein through a program of self-insurance, provided that Contractor's self-insurance program complies with all applicable laws, provides coverage equivalent in both type and level to that required in this Exhibit, and is reasonably acceptable to County. Contractor shall furnish an acceptable insurance certificate to County for any insurance coverage required by this Contract that is fulfilled through self-insurance. Stop-loss insurance and reinsurance coverage against catastrophic and unexpected expenses may not be self-insured.

12. **Certificates of Insurance.** Contractor shall furnish evidence of the insurance required in this Contract. Contractor will maintain the insurance in full force throughout the duration of this Contract. No Contract shall be in effect until the required certificates have been received, approved, and accepted by County. A renewal certificate will be sent to County ten (10) days prior to coverage expiration. The insurance for general liability and commercial automobile liability must include an

endorsement naming **Clackamas County and the State of Oregon, and their officers, elected officials, agents, and employees** as additional insureds with respect to the Work under this Contract. If requested, complete copies of insurance policies, trust agreements, etc. shall be provided to the County. The Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions and/or self-insurance.

Certificate Holder should be:

Clackamas County, 2051 Kaen Road, Suite 154, Oregon City, Oregon 97045

Certificates of Insurance should be submitted electronically or by mail to:

[BHContracts@clackamas.us](mailto:BHContracts@clackamas.us)

Clackamas County  
Contracts Administration  
2051 Kaen Road, Suite 154  
Oregon City, OR 97045

- 13. Insurance Carrier Rating.** Coverages provided by the Contractor must be underwritten by an insurance company deemed acceptable by the County. Insurance coverage shall be provided by companies admitted to do business in Oregon or, in the alternative, rated A- or better by Best's Insurance Rating. The County reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.
- 14. Waiver of Subrogation.** Contractor agrees to waive their rights of subrogation arising from the Work performed under this Contract.
- 15. Notice of cancellation or change.** There shall be no cancellation, material change, exhaustion of aggregate limits, reduction of limits, or intent not to renew the insurance coverage(s) without thirty (30) days written notice from the Contractor or its insurer(s) to the County at the following address: Clackamas County Behavioral Health Division, 2051 Kaen Road, Suite 154, Oregon City, OR 97045 or [BHContracts@clackamas.us](mailto:BHContracts@clackamas.us).
- 16. Insurance Compliance.** The County will be entitled to enforce Contractor compliance with the insurance requirements, and will 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, terminating the Contract as permitted by the Contract, or pursuing legal action to enforce the insurance requirements. In no event shall County permit a Contractor to work under this Contract when the County is aware that the Contractor is not in compliance with the insurance requirements.

**EXHIBIT F**  
**OHP REQUIRED FEDERAL TERMS AND CONDITIONS**

Unless exempt under 45 CFR Part 87 for Faith-Based Organizations (Federal Register, July 16, 2004, Volume 69, #136), or other federal provisions, Contractor shall comply and, as indicated, cause all Subcontractors to comply with the following federal requirements to the extent that they are applicable. For purposes of this Contract, all references to federal and State laws are references to federal and State laws as they may be amended from time to time.

**1. Miscellaneous Federal Provisions**

Contractor shall comply and require all Subcontractors to comply with all federal laws, regulations and executive orders applicable to this Contract or to the delivery of Work. Without limiting the generality of the foregoing, Contractor expressly agrees to comply and require all Subcontractors to comply with the following laws, regulations and executive orders to the extent they are applicable to this Contract: (a) Title VI and VII of the Civil Rights Act of 1964, as amended, (b) 45 CFR Part 84 which implements, Title V, Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, (c) the Americans with Disabilities Act of 1990, as amended, (d) Section 1557 of the Patient Protection and Affordable Care Act (ACA), (e) Executive Order 11246, as amended, (f) the Health Insurance Portability and Accountability Act of 1996, as amended, (g) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended, (h) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, (i) the Mental Health Parity and Addiction Equity Act of 2008, as amended; (j) CMS regulations (including 42 CFR Part 438, subpart K) and guidance regarding mental health parity, including 42 CFR 438.900 et. seq.; (k) all regulations and administrative rules established pursuant to the foregoing laws, (l) all other applicable requirements of federal civil rights and rehabilitation statutes, rules and regulations, and (m) all federal laws requiring reporting of Member abuse. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to this Contract and required by law to be so incorporated. No federal funds may be used to provide Work in violation of 42 U.S.C. 14402.

**2. Equal Employment Opportunity**

If this Contract, including amendments, is for more than \$10,000, then Contractor shall comply and require all Subcontractors to comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

**3. Clean Air, Clean Water, EPA Regulations**

If this Contract, including amendments, exceeds \$100,000 then Contractor shall comply and require all Subcontractors to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 7606), the Federal Water Pollution Control Act as amended (commonly known as the Clean Water Act) (33 U.S.C. 1251 to 1387), specifically including, but not limited to Section 508 (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (2 CFR Part 1532), which prohibit the use under non-exempt federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to OHA, United States Department of Health and Human Services and the appropriate Regional Office of the Environmental Protection Agency. Contractor shall include and require all Subcontractors to include in all contracts with Subcontractors receiving more than \$100,000, language requiring the Subcontractor to comply with the federal laws identified in this section.

**4. Energy Efficiency**

Contractor shall comply and require all Subcontractors to comply with applicable mandatory standards and policies relating to energy efficiency that are contained in the Oregon energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. 6201 et seq. (Pub. L. 94-163).

**5. Truth in Lobbying**

By signing this Contract, the Contractor certifies, to the best of the Contractor's knowledge and belief that:

- a.** No federal appropriated funds have been paid or will be paid, by or on behalf of Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.
- b.** If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the Contractor shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
- c.** The Contractor shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients and Subcontractors shall certify and disclose accordingly.
- d.** This certification is a material representation of fact upon which reliance was placed when this Contract was made or entered into. Submission of this certification is a prerequisite for making or entering into this Contract imposed by Section 1352, Title 31, of the U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- e.** No part of any federal funds paid to Contractor under this Contract shall be used other than for normal and recognized executive legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, electronic communication, radio, television, or video presentation designed to support or defeat the enactment of legislation before the United States Congress or any State or local legislature itself, or designed to support or defeat any proposed or pending regulation, administrative action, or order issued by the executive branch of any State or local government itself.
- f.** No part of any federal funds paid to Contractor under this Contract shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence the enactment of legislation, appropriations, regulation, administrative action, or executive order proposed or pending before the United States Congress or any State government, State legislature or local legislature or legislative body, other than for normal and recognized executive-legislative

relationships or participation by an agency or officer of a State, local or tribal government in policymaking and administrative processes within the executive branch of that government.

**g.** The prohibitions in subsections (e) and (f) of this section shall include any activity to advocate or promote any proposed, pending or future Federal, State or local tax increase, or any proposed, pending, or future requirement or restriction on any legal consumer product, including its sale or marketing, including but not limited to the advocacy or promotion of gun control.

**h.** No part of any federal funds paid to Contractor under this Contract may be used for any activity that promotes the legalization of any drug or other substance included in schedule I of the schedules of controlled substances established under Section 202 of the Controlled Substances Act except for normal and recognized executive congressional communications. This limitation shall not apply when there is significant medical evidence of a therapeutic advantage to the use of such drug or other substance of that federally sponsored clinical trials are being conducted to determine therapeutic advantage.

## **6. HIPAA Compliance**

The parties acknowledge and agree that each of County and the Contractor is a “covered entity” for purposes of privacy and security provisions of the Health Insurance Portability and Accountability Act and its implementing federal regulations (collectively referred to as HIPAA). County and Contractor shall comply with HIPAA to the extent that any Work or obligations of County arising under this Contract are covered by HIPAA. Contractor shall develop and implement such policies and procedures for maintaining the privacy and security of records and authorizing the use and disclosure of records required to comply with this Contract and with HIPAA. Contractor shall comply and cause all Subcontractors to comply with HIPAA and the following:

- a.** Privacy and Security of Individually Identifiable Health Information. Individually Identifiable Health Information about specific individuals is protected from unauthorized use or disclosure consistent with the requirements of HIPAA. Individually Identifiable Health Information relating to specific individuals may be exchanged between Contractor and County for purposes directly related to the provision of services to clients which are funded in whole or in part under this Contract. However, Contractor shall not use or disclose any Individually Identifiable Health Information about specific individuals in a manner that would violate HIPAA Privacy Rules in 45 CFR Parts 160 and 164, OHA Privacy Rules, OAR Chapter 407 Division 014, or OHA Notice of Privacy Practices, if done by OHA. A copy of the most recent OHA Notice of Privacy Practices is posted on the OHA web site at: <https://apps.state.or.us/cf1/FORMS/>, Form number ME2090 Notice of Privacy Practices, or may be obtained from OHA.
- b.** HIPAA Information Security. Contractor shall adopt and employ reasonable administrative and physical safeguards consistent with the Security Rules in 45 CFR Part 164 to ensure that client information shall be used by or disclosed only to the extent necessary for the permitted use or disclosure and consistent with applicable State and federal laws and the terms and conditions of this Contract. Security incidents involving client information must be immediately reported to DHS’ Privacy Officer.

- c. Data Transactions Systems. Contractor shall comply with the HIPAA standards for electronic transactions published in 45 CFR Part 162 and the DHS EDT Rules, OAR 410-001-0000 through 410-001-0200. In order for Contractor to exchange electronic data transactions with OHA in connection with claims or encounter data, eligibility or Enrollment information, authorizations or other electronic transaction, Contractor shall execute an EDT Trading Partner Agreement with OHA and shall comply with the OHA EDT Rules.
- d. Consultation and Testing. If Contractor reasonably believes that the Contractor's, County's or OHA's data transactions system or other application of HIPAA privacy or security compliance policy may result in a violation of HIPAA requirements, Contractor shall promptly consult the County or OHA HIPAA officer. Contractor, County, or OHA may initiate a request for testing of HIPAA transaction requirements, subject to available resources and OHA testing schedule.

**7. Resource Conservation and Recovery**

Contractor shall comply and require all Subcontractors to comply with all mandatory standards and policies that relate to resource conservation and recovery pursuant to the Resource Conservation and Recovery Act (codified at 42 U.S.C. 6901 et seq.). Section 6002 of that Act (codified at 42 U.S.C. 6962) requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency. Current guidelines are set forth in 40 CFR Part 247.

**8. Audits**

- a. Contractor shall comply, and require all subcontractors to comply, with applicable audit requirements and responsibilities set forth in this Contract and applicable state or federal law.
- b. If Contractor expends \$500,000 or more in Federal funds (from all sources) in its fiscal year beginning prior to December 26, 2014, Contractor shall have a single organization-wide audit conducted in accordance with the Single Audit Act. If Contractor expends \$750,000 or more in federal funds (from all sources) in a fiscal year beginning on or after December 26, 2014, Contractor shall have a single organization-wide audit conducted in accordance with the provisions of 2 CFR Subtitle B with guidance at 2 CFR Part 200. Copies of all audits must be submitted to OHA within 30 days of completion. If Contractor expends less than \$500,000 in Federal funds in a fiscal year beginning prior to December 26, 2014, or less than \$750,000 in a fiscal year beginning on or after that date, Contractor is exempt from Federal audit requirements for that year. Records must be available as provided in Exhibit B, Part 8, Section 2.

**9. Debarment and Suspension**

Contractor shall, in accordance with 42 CFR 438.808(b), not permit any person or entity to be a Subcontractor if the person or entity is listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal Procurement or Nonprocurement Programs" in accordance with Executive Orders No. 12549 and No. 12689, "Debarment and Suspension". (See 2 CFR Part 180). This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory authority other than Executive Order No.12549. Subcontractors with awards that exceed the simplified

acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.

Contractor shall ensure that no amounts are paid to a Provider that could be excluded from participation in Medicare or Medicaid for any of the following reasons:

- a. The Provider is controlled by a sanctioned individual
- b. The Provider has a contractual relationship that provides for the administration, management or provision of medical services, or the establishment of policies, or the provision of operational support for the administration, management or provision of medical services, either directly or indirectly, with an individual convicted of certain crimes as described in section 1128(b)(8)(B) of the Social Security Act
- c. The Provider employs or contracts, directly or indirectly, for the furnishing of health care, utilization review, medical social work, or administrative services, with one of the following:
  - (i) Any individual or entity excluded from participation in Federal health care programs.
  - (ii) Any entity that would provide those services through an excluded individual or entity.

The Contract prohibits the Contractor from knowingly having a person with ownership of 5% or more of the Contractor's equity if such person is (or is affiliated with a person or entity that is) debarred, suspended, or excluded from participation in federal healthcare programs.

If OHA learns that Contractor has a prohibited relationship with a person or entity that is debarred, suspended, or excluded from participation in federal healthcare programs, OHA:

- a. Must notify DHHS of Contractor's noncompliance;
- b. May continue an existing agreement with the Contractor unless DHHS directs otherwise; and
- c. May not renew or extend the existing contract with the Contractor unless DHHS provides to the State a written statement describing compelling reasons that exist for renewing or extending the Contract, consistent with 42 CFR 438.610.

## **10. Pro-Children Act**

Contractor shall comply and require all Subcontractors to comply with the Pro-Children Act of 1994 (codified at 20 U.S.C. Section 6081 et seq.).

## **11. Non-Discrimination**

Contractor shall comply, and require its Subcontractors to comply, with all federal and State laws and regulations including Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972 (regarding education programs and activities) the Age Discrimination Act of 1975, the Rehabilitation Act of 1973, the Americans with Disabilities Act (ADA) of 1990, and all amendments to those acts and all regulations promulgated thereunder. Contractor shall also comply with all applicable requirements of State civil rights and rehabilitation statutes and rules.

**12. OASIS**

To the extent applicable, Contractor shall comply with, and shall require Subcontractors to comply with, the Outcome and Assessment Information Set (OASIS) reporting requirements and patient notice requirements for skilled services provided by Home Health Agencies, pursuant to CMS requirements published in 42 CFR 484.45, and such subsequent regulations as CMS may issue in relation to the OASIS program.

**13. Patient Rights Condition of Participation**

To the extent applicable, Contractor shall comply with, and shall require Subcontractors to comply with, the Patient Rights Condition of Participation (COP) that Hospitals must meet to continue participation in the Medicaid program, pursuant to 42 CFR Part 482. For purposes of this Contract, Hospitals include short-term, psychiatric, rehabilitation, long-term, and children's hospitals.

**14. Federal Grant Requirements**

The federal Medicaid rules establish that OHA and the County are recipients of federal financial assistance, and therefore are subject to federal grant requirements pursuant to 42 CFR 430.2(b). To the extent applicable to Contractor or to the extent OHA and/or the County requires Contractor to supply information or comply with procedures to permit OHA and/or the County to satisfy its obligations federal grant obligations or both, Contractor must comply with the following parts of 45 CFR:

- a. Part 74, including Appendix A (uniform federal grant administration requirements);
- b. Part 92 (uniform administrative requirements for grants to state, local and tribal governments);
- c. Part 80 (nondiscrimination under Title VI of the Civil Rights Act);
- d. Part 84 (nondiscrimination on the basis of handicap);
- e. Part 91 (nondiscrimination on the basis of age);
- f. Part 95 (Medicaid and CHIP federal grant administration requirements); and
- g. Contractor shall not expend, and Contractor shall include a provision in any Subcontract that its Subcontractor shall not expend, any of the funds paid under this Contract for roads, bridges, stadiums, or any other item or service not covered under the OHP.

**15. Mental Health Parity**

Contractor shall adhere to CMS guidelines regarding Mental Health Parity detailed below:

- a. If Contractor does not include an aggregate lifetime or annual dollar limit on any medical/surgical benefits or includes an aggregate lifetime or annual dollar limit that applies to less than one-third of all medical/surgical benefits provided to enrollees, it may not impose an aggregate lifetime or annual dollar limit, respectively, on mental health or substance use disorder benefits;



- b.** If Contractor includes an aggregate lifetime or annual dollar limit on at least two-thirds of all medical/surgical benefits provided to enrollees, it must either apply the aggregate lifetime or annual dollar limit both to the medical/surgical benefits to which the limit would otherwise apply and to mental health or substance use disorder benefits in a manner that does not distinguish between the medical/surgical benefits and mental health or substance use disorder benefits; or not include an aggregate lifetime or annual dollar limit on mental health or substance use disorder benefits that is more restrictive than the aggregate lifetime or annual dollar limit, respectively, on medical/surgical benefits;
- c.** If Contractor includes an aggregate lifetime limit or annual dollar amount that applies to one-third or more but less than two-thirds of all medical/surgical benefits provided to enrollees, it must either impose no aggregate lifetime or annual dollar limit on mental health or substance use disorder benefits; or impose an aggregate lifetime or annual dollar limit on mental health or substance use disorder benefits that is no more restrictive than an average limit calculated for medical/surgical benefits in accordance with 42 CFR 438.905(e)(ii);
- d.** Contractor must not apply any financial requirement or treatment limitation to mental health or substance use disorder benefits in any classification that is more restrictive than the predominant financial requirement or treatment limitation of that type applied to substantially all medical/surgical benefits in the same classification furnished to enrollees (whether or not the benefits are furnished by Contractor).
- e.** If a member is provided mental health or substance use disorder benefits in any classification of benefits (inpatient, outpatient, emergency care, or prescription drugs), mental health or substance use disorder benefits must be provided to the member in every classification in which medical/surgical benefits are provided;
- f.** Contractor may not apply any cumulative financial requirements for mental health or substance use disorder benefits in a classification (inpatient, outpatient, emergency care, prescription drugs) that accumulates separately from any established for medical/surgical benefits in the same classification;
- g.** Contractor may not apply more stringent utilization or Prior Authorization standards to mental health or substance use disorder, than standards that are applied to medical/surgical benefits.
- h.** Contractor may not impose Non-Quantitative Treatment Limitations (NQTL) for mental health or substance use disorder benefits in any classification unless, under the policies and procedures of Contractor as written and in operation, any processes, strategies, evidentiary standards, or other factors used in applying the NQTL to mental health or substance use disorder benefits in the classification are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, or other factors used in applying the limitation for medical/surgical benefits in the classification;
- i.** Contractor shall provide all necessary documentation and reporting required by OHA to establish and demonstrate compliance with 42 CFR part 438, subpart K regarding parity in mental health and substance use disorder benefits.
- j.** Contractor shall use processes, strategies, evidentiary standards or other factors in determining access to out of network providers for mental health or substance use disorder benefits that are comparable to and applied no more stringently than, the processes, strategies, evidentiary standards or other factors in determining access to out of network providers for medical/surgical benefits in the same classification.

**EXHIBIT H  
BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement is entered into as of **January 1, 2020** (“Effective Date”) by and between **Clackamas County, a political subdivision of the State of Oregon, on behalf of its Health, Housing and Human Services, Behavioral Health Division** (“Covered Entity”) and **Folk-Time, Inc.** (“Business Associate”) in conformance with the Health Insurance Portability and Accountability Act of 1996, and its regulations (“HIPAA”).

**RECITALS**

**Whereas**, the Covered Entity has engaged the services of the Business Associate, as defined under 45 CFR §160.103, for or on behalf of the Covered Entity;

**Whereas**, the Covered Entity may wish to disclose Individually Identifiable Health Information to the Business Associate in the performance of services for or on behalf of the Covered Entity as described in a Services Agreement (“Agreement”);

**Whereas**, such information may be Protected Health Information (“PHI”) as defined by the HIPAA Rules promulgated in accordance with the Administrative Simplification provisions of HIPAA;

**Whereas**, the Parties agree to establish safeguards for the protection of such information;

**Whereas**, the Covered Entity and Business Associate desire to enter into this Business Associate Agreement to address certain requirements under the HIPAA Rules;

**Now, Therefore**, the parties hereby agree as follows:

**SECTION I – DEFINITIONS**

- 1.1 “Breach” is defined as any unauthorized acquisition, access, use or disclosure of Unsecured PHI, unless the Covered Entity demonstrates that there is a low probability that the PHI has been compromised. The definition of Breach excludes the following uses and disclosures:
  - 1.1.1 Unintentional access by a Covered Entity or Business Associate in good faith and within an Workforce member’s course and scope of employment or placement;
  - 1.1.2 Inadvertent one time disclosure between Covered Entity or Business Associate Work force members; and
  - 1.1.3 The Covered Entity or Business Associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain the information.
- 1.2 “Covered Entity” shall have the meaning given to such term under the HIPAA Rules, including, but not limited to, 45 CFR §160.103.
- 1.3 “Designated Record Set” shall have the meaning given to such term under the HIPAA Rules, including, but not limited to 45 CFR §164.501.
- 1.4 “Effective Date” shall be the Effective Date of this Business Associate Agreement.
- 1.5 "Electronic Protected Health Information" or "Electronic PHI" shall have the meaning given to such term at 45 CFR §160.103, limited to information of the Covered Entity that the Business Associate creates, receives, accesses, maintains or transmits in electronic media on behalf of the Covered Entity under the terms and conditions of this Business Associate Agreement.
- 1.6 “Health Care Operations” shall have the meaning given to such term under the HIPAA Rules, including, but not limited to, 45 CFR §164.501.
- 1.7 “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules codified at 45 CFR Part 160 and Part 164.

**Folk-Time, Inc. – Personal Services Contract (OHP) #9317**

- 1.8 “Individual” shall have the meaning given to such term in 45 CFR §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).
- 1.9 “Individually Identifiable Health Information” shall have the meaning given to such term under the HIPAA Rules, including, but not limited to 45 CFR §160.103.
- 1.10 “Protected Health Information” or “PHI” means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an Individual; the provision of health care to an Individual; or the past, present or future payment for the provision of health care to an Individual; and (ii) that identifies the Individual or with respect to which there is a reasonable basis to believe the information can be used to identify the Individual, and shall have the meaning given to such term under the HIPAA Rules, 45 CFR §160.103 and §164.501.
- 1.11 “Protected Information” shall mean PHI provided by the Covered Entity to Business Associate or created, maintained, transmitted or received by Business Associate on Covered Entity’s behalf.
- 1.12 “Required by Law” shall have the meaning given to such phrase in 45 CFR §164.103.
- 1.13 “Secretary” shall mean the Secretary of the Department of Health and Human Services or his or her designee.
- 1.14 “Security Incident” shall have the meaning given to such phrase in 45 CFR §164.304.
- 1.15 “Unsecured Protected Health Information” shall mean protected health information that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in accordance with 45 CFR §164.402.
- 1.16 Workforce means employees, volunteers, trainees, and other persons whose conduct, in the performance of work for a Covered Entity or Business Associate, is under the direct control of such Covered Entity or Business Associate, whether or not they are paid by the Covered Entity or Business Associate.

**SECTION II – OBLIGATIONS AND ACTIVITIES OF THE BUSINESS ASSOCIATE**

The Business Associate agrees to the following:

- 2.1 Not to use or further disclose PHI other than as permitted or required by this Business Associate Agreement or as Required by Law;
- 2.2 To use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to Electronic PHI, to prevent use or disclosure of PHI other than as provided for by this Business Associate Agreement;
- 2.3 To mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a use or disclosure of PHI by the Business Associate in violation of the requirements of this Business Associate Agreement;
- 2.4 To immediately report to the Covered Entity any use or disclosure of PHI not provided for by this Business Associate Agreement of which it becomes aware, including any Security Incident of which it becomes aware;
- 2.5 In accordance with 45 CFR §§164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any agent, including a subcontractor, that creates, receives, maintains, or transmits PHI on behalf of the Business Associate agrees in writing to the same restrictions, conditions and requirements that apply to the Business Associate with respect to such PHI;
- 2.6 To provide access, at the request of the Covered Entity, and in the time and manner designated by the Covered Entity, to PHI in a Designated Record Set, to the Covered Entity or, as directed by the Covered Entity, to the Individual or the Individual’s designee as necessary to meet the Covered Entity’s obligations under 45 CFR §164.524; provided, however, that this Section 2.6 is applicable

- only to the extent the Designated Record Set is maintained by the Business Associate for the Covered Entity;
- 2.7 To make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR §164.526 at the request of the Covered Entity or an Individual, and in the time and manner designated by the Covered Entity; provided, however, that this Section 2.7 is applicable only to the extent the Designated Record Set is maintained by the Business Associate for the Covered Entity;
  - 2.8 To make internal practices, books and records, including policies and procedures on PHI, relating to the use and disclosure of PHI received from, or created or received by the Business Associate on behalf of, the Covered Entity available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary's determining the Covered Entity's and the Business Associate's compliance with the HIPAA Rules;
  - 2.9 To document such disclosures of PHI and information related to such disclosures as would be required for the Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528;
  - 2.10 To provide to the Covered Entity or an Individual, in a time and manner designated by the Covered Entity, information collected in accordance with Section 2.9 of this Business Associate Agreement, to permit the Covered Entity to respond to a request by an accounting of disclosures of PHI in accordance with 45 CFR §164.528;
  - 2.11 That if it creates, receives, maintains, or transmits any Electronic PHI on behalf of the Covered Entity, it will implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic PHI, and it will ensure that any agents (including subcontractors) to whom it provides such Electronic PHI agrees to implement reasonable and appropriate security measures to protect the information. The Business Associate will report to the Covered Entity any Security Incident of which it becomes aware;
  - 2.12 To retain records related to the PHI hereunder for a period of six (6) years unless the Business Associate Agreement is terminated prior thereto. In the event of termination of this Business Associate Agreement, the provisions of Section V of this Business Associate Agreement shall govern record retention, return or destruction;
  - 2.13 To promptly notify the Covered Entity of a Breach of Unsecured PHI as soon as practicable, but in no case later than 10 calendar days, after the discovery of such Breach in accordance with 45 CFR §164.410. A Breach shall be treated as discovered as of the first day on which such Breach is known, or by exercising reasonable diligence would have been known, to any person, other than the person committing the Breach, who is an employee, officer, or agent of Business Associate. The notification shall include, to the extent possible, the identification of each Individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, used, or disclosed during the Breach in addition to the information required in Section V. In addition, Business Associate shall provide the Covered Entity with any other available information that the Covered Entity is required to include in the notification to the individual under 45 CFR §164.404(c); and
  - 2.14 To the extent Business Associate is to carry out one or more of the Covered Entity's obligations under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligations.

**SECTION III – THE PARTIES AGREE TO THE FOLLOWING PERMITTED USES AND DISCLOSURES BY THE BUSINESS ASSOCIATE:**

- 3.1 Business Associate agrees to make uses and disclosures and requests for PHI consistent with the Covered Entity's minimum necessary policies and procedures.
- 3.2 Except as otherwise limited in this Business Associate Agreement, the Business Associate may use or disclose PHI to perform functions, activities or services for, or on behalf of, the Covered Entity as specified in the Services Agreement, provided that such use or disclosure would not violate the HIPAA Rules if done by the Covered Entity; and,
- 3.3 Except as otherwise limited in this Business Associate Agreement, the Business Associate may:
  - a. **Use for management and administration.** Use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate; and,
  - b. **Disclose for management and administration.** Disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that disclosures are Required by Law, or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as Required by Law or for the purposes for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

#### **SECTION IV – NOTICE OF PRIVACY PRACTICES**

- 4.1 If requested, the Covered Entity shall provide the Business Associate with the notice of privacy practices that the Covered Entity produces in accordance with 45 CFR §164.520, as well as any changes to such notice. Covered Entity shall (a) provide the Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect the Business Associate's permitted or required uses and disclosures; (b) notify the Business Associate of any restriction to the use or disclosure of PHI that the Covered Entity has agreed to in accordance with 45 CFR §164.522, to the extent that such restrictions may affect the Business Associate's use or disclosure of PHI; and (c) not request the Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Standards if done by the Covered Entity, except as set forth in Section 3.2 above.

#### **SECTION V – BREACH NOTIFICATION REQUIREMENTS**

- 5.1 With respect to any Breach, the Covered Entity shall notify each individual whose Unsecured PHI has been, or is reasonably believed by the Covered Entity to have been, accessed, acquired, used, or disclosed as a result of such Breach, except when law enforcement requires a delay pursuant to 45 CFR §164.412. This notice shall be:
  - a. Without unreasonable delay and in no case later than 60 calendar days after discovery of a Breach.
  - b. In plain language including and to the extent possible:
    - 1) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
    - 2) A description of the types of Unsecured PHI that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
    - 3) Any steps Individuals should take to protect themselves from potential harm resulting from the Breach;

- 4) A brief description of what the Covered Entity and/or Business Associate is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against any further Breaches; and,
  - 5) Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, web site, or postal address.
- c. By a method of notification that meets the requirements of 45 CFR §164.404(d).
  - d. Provided to the media when required under 45 CFR §164.406 and to the Secretary pursuant to 45 CFR §164.408.
- 5.2. Business Associate shall promptly provide any information requested by Covered Entity to provide the information described in Section 5.1.

## **SECTION VI – TERM AND TERMINATION**

6.1 **Term.** The term of this Business Associate Agreement shall be effective as of the date set forth above in the first paragraph and shall terminate when all of the PHI created, maintained, transmitted or received by the Business Associate on behalf of the Covered Entity, is destroyed or returned to the Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.

6.2 **Termination for Cause.** Upon the Covered Entity's knowledge of a material breach of this Business Associate Agreement by the Business Associate, the Covered Entity shall provide an opportunity for the Business Associate to cure the breach or end the violation. The Covered Entity shall terminate this Business Associate Agreement and the Services Agreement if the Business Associate does not cure the breach or end the violation within the time specified by the Covered Entity, or immediately terminate this Business Associate Agreement if cure is not reasonably possible.

If the Business Associate fails to cure a breach for which cure is reasonably possible, the Covered Entity may take action to cure the breach, including but not limited to obtaining an injunction that will prevent further improper use or disclosure of PHI. Should such action be taken, the Business Associate agrees to indemnify the Covered Entity for any costs, including court costs and attorneys' fees, associated with curing the breach.

Upon the Business Associate's knowledge of a material breach of this Business Associate Agreement by the Covered Entity, the Business Associate shall provide an opportunity for the Covered Entity to cure the breach or end the violation. The Business Associate shall terminate this Business Associate Agreement and the Services Agreement if the Covered Entity does not cure the breach or end the violation within the time specified by the Business Associate, or immediately terminate this Business Associate Agreement if the Covered Entity has breached a material term of this Business Associate Agreement if cure is not reasonably possible.

6.3 **Effect of Termination.**

a. **Return or Destruction of PHI.** Except as provided in Section 6.3(b), upon termination of this Business Associate Agreement, for any reason, the Business Associate shall return, or if agreed to by the Covered Entity, destroy all PHI received from the Covered Entity, or created, maintained or received by the Business Associate on behalf of the Covered Entity and retain no copies. This provision shall apply to PHI that is in the possession of subcontractors or agents of the Business Associate.

b. **Return or Destruction of PHI Infeasible.** In the event that the Business Associate determines that returning or destroying PHI is infeasible, the Business Associate shall provide to the Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction of the PHI is infeasible, the Business

Associate shall extend the protections of this Business Associate Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as the Business Associate maintains such PHI. In addition, the Business Associate shall continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to Electronic PHI to prevent use or disclosure of the PHI, for as long as the Business Associate retains the PHI.

## **SECTION VII – GENERAL PROVISIONS**

- 7.1 **Regulatory references.** A reference in this Business Associate Agreement to the HIPAA Rules or a section in the HIPAA Rules means that Rule or Section as in effect or as amended from time to time.
- 7.2 **Compliance with law.** In connection with its performance under this Business Associate Agreement, Business Associate shall comply with all applicable laws, including but not limited to laws protecting the privacy of personal information about Individuals.
- 7.3 **Amendment.** The Parties agree to take such action as is necessary to amend this Business Associate Agreement from time to time. All amendments must be in writing and signed by both Parties.
- 7.4 **Indemnification by Business Associate.** Business Associate agrees to indemnify, defend and hold harmless the Covered Entity and its commissioners, employees, directors, officers, subcontractors, agents or other members of its workforce, each of the foregoing hereinafter referred to as “Indemnified Party,” against all actual and direct losses suffered by the Indemnified Party and all liability to third parties arising from or in connection with Business Associate’s breach of Sections II and III of this Business Associate Agreement. Accordingly, on demand, Business Associate shall reimburse any Indemnified Party for any and all actual and direct losses, liabilities, fines, penalties, costs or expenses (including reasonable attorneys’ fees) which may for any reason be imposed upon any Indemnified Party by reason of any suit, claim, action, proceeding or demand by any third party which results for Business Associate’s breach hereunder. The obligation to indemnify any Indemnified Party shall survive the expiration or termination of this Agreement for any reason.
- 7.5 **Survival.** The respective rights and obligations of Business Associate under Section II of this Business Associate Agreement shall survive the termination of the Services Agreement and this Business Associate Agreement.
- 7.6 **Interpretation.** Any ambiguity in this Business Associate Agreement shall be resolved to permit Covered Entity to comply with the HIPAA Rules.

*[Signature Page for BAA Follows]*

**SIGNATURE PAGE FOR BUSINESS ASSOCIATE AGREEMENT**

The Parties hereto have duly executed this Agreement as of the Effective Date as defined here above.

**Business Associate**

**Covered Entity**

**FOLK-TIME, INC.**

**CLACKAMAS COUNTY**

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Authorized Signature

Date

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Richard Swift

Date

Health, Housing and Human Services

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Name / Title (Printed)



February 27, 2020

Board of County Commissioners  
Clackamas County

Members of the Board:

**Approval of a Personal Services Contract with The Mental Health Association of Oregon  
for a Person-Centered Planning Support Peer**

<b>Purpose/Outcome</b>	Provides a person-centered planning support peer for Behavioral Health's Adult Care Coordination Team.
<b>Dollar Amount and Fiscal Impact</b>	Contract maximum payment is \$284,190.50. Initial term: \$121,630.50; renewal term, if awarded: \$162,560.00.
<b>Funding Source</b>	No County General Funds are involved. State of Oregon, Community Mental Health Program funds.
<b>Duration</b>	Effective January 1, 2020 and terminates on June 30, 2021, with an option for a two (2) year extension.
<b>Previous Board Action</b>	N/A
<b>Counsel Approval</b>	Contract reviewed and approved February 12, 2020.
<b>Strategic Plan Alignment</b>	<ol style="list-style-type: none"> <li>1. Provide coordination, assessment, outreach, and recovery services to Clackamas County residents experiencing mental health and addiction distress so they can achieve their own recovery goals</li> <li>2. Ensure safe, healthy and secure communities.</li> </ol>
<b>Contact Person</b>	Mary Rumbaugh, Director – Behavioral Health Division 503-742-5305
<b>Contract No.</b>	County Contract #2314 / BH Contract #9016

**BACKGROUND:**

The Behavioral Health Division of the Health, Housing & Human Services Department requests the approval of a Personal Service Contract with The Mental Health Association of Oregon for a Person-Centered Planning Support Peer for Behavioral Health's Adult Care Coordination Team. The Peer will assist adults receiving care coordination services from the Behavioral Health in identifying resources, accessing supports and other systems, and, if requested, navigating treatment and support systems.

The Mental Health Association of Oregon (MHOA) is an inclusive peer-run nonprofit organization committed to promoting self-directed recovery and wellness for all individuals. Behavioral Health has collaborated with MHAO since 2015 to provide peer delivered services to Clackamas County residents.

This Contract is effective January 1, 2020 and continues through June 30, 2021, with an option to extend for an additional two (2) years. The maximum value for the initial term of the Contract is \$121,630.50, should the option to extend be exercised the maximum value of the Contract is \$284,190.50.

*Healthy Families. Strong Communities.*

**PROCUREMENT PROCESS:**

The RFP was published in accordance with Local Contract Review Board Rule C-047-0260 and applicable ORS, on July 15, 2019, for Behavioral Health Peer Delivered Services. The RFP included this project along with six other options for proposers. Firms were allowed to propose on one or more projects included in the RFP. The RFP closed on August 1, 2019 and this project received two proposals. An evaluation committee scored the proposals in accordance with the RFP scoring criteria and recommended that The Mental Health Association of Oregon be awarded this contract. Notice of Intent to Award was published on ORPIN September 25, 2019, and no protests were received.

**RECOMMENDATION:**

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

Respectfully Submitted,

Richard Swift, Director  
Health, Housing & Human Services Department

Placed on the board agenda of \_\_\_\_\_ by the Procurement Division.



**CLACKAMAS COUNTY  
PERSONAL SERVICES CONTRACT  
County Contract #2314 / BH Contract #9016**

This Personal Services Contract (this “Contract”) is entered into between **The Mental Health Association of Oregon** (“Contractor”), and Clackamas County, a political subdivision of the State of Oregon (“County”) on behalf of its Health Housing and Human Services Department, Behavioral Health Division.

**ARTICLE I.**

- 1. Effective Date and Duration.** This Contract shall become effective on **January 1, 2020** and upon signature of both parties. County and Contractor acknowledge that Work under the Contract was performed prior to the effective date. County and Contractor hereby ratify and approve Work performed prior to execution of the Contract, but not earlier than January 1, 2020. Provided, however, this ratification does not constitute a waiver of any right, title, claim, defense, or other action County may have against Contractor arising out of or related to the previously-performed Work. Unless earlier terminated or extended, this Contract shall expire on June 30, 2021. Subject to the approval of both parties, this Contract includes one (1) optional renewal term of two (2) years.
- 2. Scope of Work.** Contractor shall provide the following personal services: Person Centered Planning – Support Peer with Behavioral Health Division’s Adult Care Coordination Team (“Work”), further described in **Exhibit B**.
- 3. Consideration.** The County agrees to pay Contractor, from available and authorized funds, a sum not to exceed **one hundred twenty-one thousand six hundred thirty dollars and fifty cents (\$121,630.50)**, for accomplishing the Work required by this Contract during the initial term, which expires on June 30, 2021, and the total contract value including the two (2) year renewal term shall not exceed **two hundred eighty-four thousand one hundred ninety dollars and fifty cents (\$284,190.50)**. Consideration rates are on a fixed rate basis in accordance with the rates and costs specified in **Exhibit D**. If any interim payments to Contractor are made, such payments shall be made only in accordance with the schedule and requirements in **Exhibit D**.
- 4. Invoices and Payments.** Contractor shall submit monthly invoices for Work performed, as more fully described in **Exhibit D**.
- 5. Contract Documents.** This Contract consists of the following selected documents, which are attached and incorporated by reference herein:

- Contract
- Exhibit A – Definitions
- Exhibit B – Scope of Work
- Exhibit C – CMHP Service Element
- Exhibit D – Compensation
- Exhibit E – Insurance
- Exhibit F – CMHP Required Federal Terms and Conditions
- Exhibit G – CMHP Required Provider Contract Provisions

**The Mental Health Association of Oregon – Personal Services Contract (CMHP) #9016**

- Exhibit H – Business Associate Agreement (BAA)
- Exhibit I – Qualified Service Organization Business Associate Agreement (QSOBAA)

**6. Contractor and County Contact Information**

The Mental Health Association of Oregon Address: 10373 NE Hancock St. Suite 106 Portland, OR 97220 Phone: 503-922-2377 Email: sbrisco@mhaoforegon.org	Clackamas County – Behavioral Health Division Address: 2051 Kaen Road, Suite 154 Oregon, City, OR 97045 Phone: 503-742-5335 Email: BHContracts@clackamas.us
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Payment information will be reported to the Internal Revenue Service (“IRS”) under the name and taxpayer ID number submitted. (See I.R.S. 1099 for additional instructions regarding taxpayer ID numbers.) Information not matching IRS records will subject Contractor payments to backup withholding.

**ARTICLE II.**

- 1. ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence, in accordance with generally accepted accounting procedures and practices, sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. County and their duly authorized representatives shall have access to the books, documents, papers, and records of Contractor, which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Contractor shall maintain such books and records for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.
- 2. AVAILABILITY OF FUTURE FUNDS.** Any continuation or extension of this Contract after the end of the fiscal period in which it is written is contingent on a new appropriation for each succeeding fiscal period sufficient to continue to make payments under this Contract, as determined by the County in its sole administrative discretion.
- 3. CAPTIONS.** The captions or headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Contract.
- 4. COMPLIANCE WITH APPLICABLE LAW.** Contractor shall comply with all applicable federal, state and local laws, regulations, executive orders, and ordinances, as such may be amended from time to time. Contractor shall further comply with any and all terms, conditions, and other obligations as may be required by applicable State and Federal agencies providing funding for performance under this Contract, whether or not specifically referenced herein.
- 5. COUNTERPARTS.** This Contract may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- 6. GOVERNING LAW.** This Contract, and all rights, obligations, and disputes arising out of it, shall be governed and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without regard to principles of conflicts of law. Any claim, action, or suit between County and Contractor that arises out of or relates to the performance of this Contract shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought in a

**The Mental Health Association of Oregon – Personal Services Contract (CMHP) #9016**

federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the County of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. Contractor, by execution of this Contract, hereby consents to the personal jurisdiction of the courts referenced in this section.

- 7. RESPONSIBILITY FOR DAMAGES; INDEMNITY.** Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, the conduct of Work, or from any act, omission, or neglect of Contractor, its subcontractors, agents, or employees. The Contractor agrees to indemnify, hold harmless and defend the County, and its officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees, subcontractors, or agents. However, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of County or any department of County, nor purport to act as legal representative of County or any of its departments, without first receiving from the Clackamas County Counsel's Office authority to act as legal counsel for County, nor shall Contractor settle any claim on behalf of County without the approval of the Clackamas County Counsel's Office. County may, at its election and expense, assume its own defense and settlement.

Contractor shall indemnify, hold harmless and defend the State of Oregon, and its officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees, subcontractors, or agents.

- 8. INDEPENDENT CONTRACTOR STATUS.** The service(s) to be rendered under this Contract are those of an independent contractor. Although the County reserves the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, County cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work. Contractor is not to be considered an agent or employee of County for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; and (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to County employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits.
- 9. INSURANCE.** Contractor shall secure at its own expense and keep in effect during the term of the performance under this Contract the insurance required and minimum coverage indicated in **Exhibit E**.
- 10. LIMITATION OF LIABILITIES.** This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent. Except for liability arising under or related to Article II, Section 13 or Section 21 neither party shall be liable for (i) any indirect, incidental, consequential or special damages under this Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms.

- 11. NOTICES.** Except as otherwise provided in this Contract, any required notices between the parties shall be given in writing by personal delivery, email, or mailing the same. Any communication or notice mailed shall be deemed to be given five (5) days after mailing, and immediately upon personal delivery, or within 2 hours after the email is sent during County's normal business hours (Monday – Thursday, 7:00 a.m. to 6:00 p.m.) (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered.
- 12. OWNERSHIP OF WORK PRODUCT.** All work product of Contractor that results from this Contract (the "Work Product") is the exclusive property of County. County and Contractor intend that such Work Product be deemed "work made for hire" of which County shall be deemed the author. If for any reason the Work Product is not deemed "work made for hire," Contractor hereby irrevocably assigns to County all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark or trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as County may reasonably request in order to fully vest such rights in County. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications. Notwithstanding the above, County shall have no rights in any pre-existing Contractor intellectual property provided to County by Contractor in the performance of this Contract except to copy, use and re-use any such Contractor intellectual property for County use only. If this Contract is terminated prior to completion, and the County is not in default, County, in addition to any other rights provided by this Contract, may require the Contractor to transfer and deliver all partially completed Work Product, reports or documentation that the Contractor has specifically developed or specifically acquired for the performance of this Contract.
- 13. REPRESENTATIONS AND WARRANTIES.** Contractor represents and warrants to County that (A) Contractor has the power and authority to enter into and perform this Contract; (B) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (C) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work; (D) Contractor is an independent contractor as defined in ORS 670.600; and (E) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.
- 14. SURVIVAL.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Article II, Sections 1, 6, 7, 11, 13, 14, 16 and 21, and all other rights and obligations which by their context are intended to survive. However, such expiration shall not extinguish or prejudice the County's right to enforce this Contract with respect to: (a) any breach of a Contractor warranty; or (b) any default or defect in Contractor performance that has not been cured.
- 15. SEVERABILITY.** If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.
- 16. SUBCONTRACTS AND ASSIGNMENTS.** Contractor shall not enter into any subcontracts for any of the Work required by this Contract, or assign or transfer any of its interest in this Contract by operation of law or otherwise, without obtaining prior written approval from the County, which shall be granted or denied in the County's sole discretion. In addition to any provisions the County may

**The Mental Health Association of Oregon – Personal Services Contract (CMHP) #9016**

require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this Article II, Sections 1, 7, 8, 13, 16 and 27 as if the subcontractor were the Contractor. County's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.

- 17. SUCCESSORS IN INTEREST.** The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- 18. TAX COMPLIANCE CERTIFICATION.** The Contractor shall comply with all federal, state and local laws, regulation, executive orders and ordinances applicable to this Contract. Contractor represents and warrants that it has complied, and will continue to comply throughout the duration of this Contract and any extensions, with all tax laws of this state or any political subdivision of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318. Any violation of this section shall constitute a material breach of this Contract and shall entitle County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract or applicable law.
- 19. TERMINATIONS.** A) This Contract may be terminated by mutual agreement of the parties or by the County for one of the following reasons: (i) for convenience upon thirty (30) days written notice to Contractor; or (ii) at any time the County fails to receive funding, appropriations, or other expenditure authority as solely determined by the County. Upon receipt of written notice of termination from the County, Contractor shall immediately stop performance of the Work. (B) if Contractor breaches any Contract provision or is declared insolvent, County may terminate after thirty (30) days written notice with an opportunity to cure. Upon termination of this Contract, Contractor shall deliver to County all documents, information, works-in-progress and other property that are or would be deliverables had the Contract Work been completed. Upon County's request, Contractor shall surrender to anyone County designates, all documents, research, objects or other tangible things needed to complete the Work.
- 20. REMEDIES.** If terminated by the County due to a breach by the Contractor, then the County shall have any remedy available to it in law or equity. If this Contract is terminated for any other reason, Contractor's sole remedy is payment for the goods and services delivered and accepted by the County, less any setoff to which the County is entitled.
- 21. NO THIRD PARTY BENEFICIARIES.** County and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.
- 22. TIME IS OF THE ESSENCE.** Contractor agrees that time is of the essence in the performance this Contract.
- 23. FOREIGN CONTRACTOR.** If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.
- 24. FORCE MAJEURE.** Neither County nor Contractor shall be held responsible for delay or default caused by events outside the County or Contractor's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, Contractor shall make all reasonable efforts to

**The Mental Health Association of Oregon – Personal Services Contract (CMHP) #9016**

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.

**25. WAIVER.** The failure of County to enforce any provision of this Contract shall not constitute a waiver by County of that or any other provision.

**26. PUBLIC CONTRACTING REQUIREMENTS.** Pursuant to the public contracting requirements contained in Oregon Revised Statutes (“ORS”) Chapter 279B.220 through 279B.235, Contractor shall:

- a. Make payments promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the work provided for in the Contract.
- b. Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of the Contract.
- c. Not permit any lien or claim to be filed or prosecuted against County on account of any labor or material furnished.
- d. Pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
- e. If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a subcontractor by any person in connection with the Contract as such claim becomes due, the proper officer representing Clackamas County may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due Contractor by reason of the Contract.
- f. As applicable, the Contractor shall pay employees for work in accordance with ORS 279B.235, which is incorporated herein by this reference. The Contractor shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract, and failure to comply is a breach entitling County to terminate this Contract for cause.
- g. If the Work involves lawn and landscape maintenance, Contractor shall salvage, recycle, compost, or mulch yard waste material at an approved site, if feasible and cost effective.

**27. ABUSE REPORTING.** Contractor shall comply with all processes and procedures of child abuse (ORS 419B.005 – 419B.050), mentally ill and developmentally disabled abuse (ORS 430.731 – 430.768 and OAR 943-045-0250 through 493-045-0370) and elder abuse reporting laws (ORS 124.050 – 124.092) as if Contractor were a mandatory abuse reporter. If Contractor is not a mandatory reporter by statute, these reporting requirements shall apply during work hours only. Contractor shall immediately report to the proper State or law enforcement agency circumstances (and provide such other documentation as may be relevant) supporting reasonable cause to believe that any person has abused a child, mentally ill or developmentally disabled adult or an elderly person, or that any such person has been abused.

**28. CONFIDENTIALITY.** Contractor acknowledges that it and its employees and agents may, in the course of performing their obligations under this Contract, be exposed to or acquire information that the County desires or is required to maintain as confidential. Any and all information of any form obtained by Contractor or its employees or agents in the performance of this Contract, including but not limited to Personal Information (as “Personal Information” is defined in ORS 646A.602(11), shall be deemed to be confidential information of the County (“Confidential Information”). Any reports or other documents or items (including software) which result from the use of the Confidential Information by Contractor shall be treated with respect to confidentiality in the same manner as the Confidential Information.

Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever



**The Mental Health Association of Oregon – Personal Services Contract (CMHP) #9016**

(other than in the performance of this Contract), and to advise each of its employees and agents of their obligations to keep Confidential Information confidential.

Contractor agrees that, except as directed by the County, Contractor will not at any time during or after the term of this Contract, disclose, directly or indirectly, any Confidential Information to any person, and that upon termination or expiration of this Contract or the County's request, Contractor will turn over to the County all documents, papers, records and other materials in Contractor's possession which embody Confidential Information. Contractor acknowledges that breach of this Contract, including disclosure of any Confidential Information, or disclosure of other information that, at law or in good conscience or equity, ought to remain confidential, will give rise to irreparable injury to the County that cannot adequately be compensated in damages. Accordingly, the County may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of the County and are reasonable in scope and content.

Contractor agrees to comply with all reasonable requests by the County to ensure the confidentiality and nondisclosure of the Confidential Information, including if requested and without limitation: (a) obtaining nondisclosure agreements, in a form approved by the County, from each of Contractor's employees and agents who are performing services, and providing copies of such agreements to the County; and (b) performing criminal background checks on each of Contractor's employees and agents who are performing services, and providing a copy of the results to the County.

Contractor shall report, either orally or in writing, to the County any use or disclosure of Confidential Information not authorized by this Contract or in writing by the County, including any reasonable belief that an unauthorized individual has accessed Confidential Information. Contractor shall make the report to the County immediately upon discovery of the unauthorized disclosure, but in no event more than two (2) business days after Contractor reasonably believes there has been such unauthorized use or disclosure. Contractor's report shall identify: (i) the nature of the unauthorized use or disclosure, (ii) the Confidential Information used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Contractor has taken or shall take to prevent future similar unauthorized use or disclosure. Contractor shall provide such other information, including a written report, as reasonably requested by the County.

Notwithstanding any other provision in this Contract, Contractor will be responsible for all damages, fines and corrective action (including credit monitoring services) arising from disclosure of such Confidential Information caused by a breach of its data security or the confidentiality provisions hereunder.

The provisions in this Section shall operate in addition to, and not as limitation of, the confidentiality and similar requirements set forth in the rest of the Contract, as it may otherwise be amended. Contractor's obligations under this Contract shall survive the expiration or termination of the Contract, as amended, and shall be perpetual.

**29. CRIMINAL BACKGROUND CHECK REQUIREMENTS.** Contractor shall be required to have criminal background checks (and in certain instances fingerprint background checks) performed on all employees, agents, or subcontractors that perform services under this Contract. Only those employees, agents, or subcontractors that have met the acceptability standards of the County may perform services under this Contract or be given access to Personal Information, Confidential Information or access to County facilities.

**The Mental Health Association of Oregon – Personal Services Contract (CMHP) #9016**

**30. FURTHER ASSURANCES.** Contractor agrees to take all necessary steps, and execute and deliver any and all necessary written instruments, to perform under this Contract including, but no limited to, executing all additional documentation necessary for County to comply with applicable State or Federal funding requirements.

**31. MERGER.** THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER REFERENCED THEREIN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY ALL PARTIES. ANY SUCH AMENDMENT, CONSENT, OR WAIVER SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. CONTRACTOR, BY THE SIGNATURE HERETO OF ITS AUTHORIZED REPRESENTATIVE, IS AN INDEPENDENT CONTRACTOR, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS CONTRACT, AND CONTRACTOR AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

[Signature page follows]



**EXHIBIT A  
DEFINITIONS**

Whenever used in this Contract, the following terms shall have the meanings set forth below:

1. **“Addiction Treatment, Recovery, & Prevention Services”** means treatment Services for Individuals diagnosed with disorders related to the taking of a drug of abuse including alcohol, to the side effects of a medication, and to a toxin exposure. The disorders include substance use disorders such as substance dependence and substance abuse, and substance-induced disorders, including substance intoxication, withdrawal, delirium, and dementia, as well as substance induced psychotic disorder, mood disorder, etc., as defined in DSM criteria.
2. **“Aging and People with Disabilities” or “APD”** means a division within the Department of Human Services that is responsible for management, financing and regulation services for aging adults and people with disabilities.
3. **“Allowable Costs”** means the costs described in 2 CFR Part 200 or 45 CFR Part 75, as applicable, except to the extent such costs are limited or excluded by other provisions of the Contract.
4. **“Client” or “Individual”** means, with respect to a particular Service, any person who is receiving that Service, in whole or in part, with funds provided under this Contract.
5. **“Community Mental Health Program” or “CMHP”** means an entity that is responsible for planning the delivery of Services for Individuals with mental or emotional disturbances, drug abuse, alcohol abuse or gambling addiction problems in a specific geographic area of the state under an agreement with OHA or a Local Mental Health Authority.
6. **“Contractor” or “Provider”** means the person or entity providing particular Services, or a portion thereof, under a contract or agreement.
7. **“Coordinated Care Organizations” or “CCO”** means a corporation, governmental agency, public corporation, or other legal entity that is certified as meeting the criteria adopted by the Oregon Health Authority under ORS 414.625 to be accountable for care management and to provide integrated and coordinated health care for each of the organization’s members.
8. **“County”** means Clackamas County, a political subdivision of the State of Oregon.
9. **“DHS”** means the Department of Human Services of the State of Oregon.
10. **“Health Services Division” or “HSD”** means the division of OHA that is responsible for Community Mental Health, Addiction Treatment, Recovery & Prevention, and Problem Gambling Services.
11. **“Individual” or “client”** means, with respect to a particular Service, any person who is receiving that Service, in whole or in part, with funds provided under a contract or agreement.
12. **“Local Mental Health Authority” or “LMHA”** means one of the following entities:
  - a. The board of county commissioners of one or more counties that establishes or operates a Community Mental Health Program;
  - b. The tribal council, in the case of a federally recognized tribe of Native Americans, that elects to enter into an agreement to provide mental health services; or
  - c. A regional local mental health authority comprised of two or more boards of county commissioners.
13. **“Measures and Outcomes Tracking System” or “MOTS”** means the OHA data system that stores data submitted by contractors and subcontractors.

**The Mental Health Association of Oregon – Personal Services Contract (CMHP) #9016**

14. **“Misexpenditure”** means funds, other than an Overexpenditure, disbursed to a Contractor by County under this Contract and expended by Contractor that is:
  - a. Identified by the federal government as expended contrary to applicable statutes, rules, OMB Circulars or 45 CFR Part 75, as applicable, or any other authority that governs the permissible expenditure of such funds, for which the federal government has requested reimbursement by the State of Oregon, whether in the form of a federal determination of improper use of federal funds, a federal notice of disallowance, or otherwise; or
  - b. Identified by the State of Oregon, OHA, or County as expended in a manner other than that permitted by this Contract, including without limitation any funds expended by Contractor contrary to applicable statutes, rules, OMB Circulars or 45 CFR Part 75, as applicable, or any other authority that governs the permissible expenditure of such funds; or
  - c. Identified by the State of Oregon, OHA, or County as expended on the delivery of a Service that did not meet the standards and requirements of the Contract with respect to that Service.
15. **“OAR”** means the Oregon Administrative Rules as promulgated by the Oregon Health Authority and as amended from time to time.
16. **“Oregon Health Authority” or “OHA”** means the agency within the State of Oregon that is responsible for Problem Gambling, Addiction Treatment, Recovery, & Prevention Services, children and adult Community Mental Health Services, and maintaining custody of persons committed to the state, by courts, for care and treatment of mental illness.
17. **“Overexpenditure”** means funds disbursed to Contractor by County under the Contract and expended by Contractor that is identified by the State of Oregon, OHA, or County, through any disbursement reconciliation permitted or required under the Contract, as in excess of the funds Contractor is entitled to.
18. **“Provider” or “Contractor”** mean the person or entity providing particular Services, or a portion thereof, under a contract or agreement.
19. **“Provider Contract” or “Provider Agreement”** means the contract, subcontract, agreement or subrecipient agreement to purchase particular Services.
20. **“Serious and Persistent Mental Illness (SPMI)”** means the current DSM diagnostic criteria for at least one of the following conditions as a primary diagnosis for an adult age 18 or older:
  - a. Schizophrenia and other psychotic disorders;
  - b. Major depressive disorder;
  - c. Bipolar disorder;
  - d. Anxiety disorders limited to Obsessive Compulsive Disorder (OCD) and Post Traumatic Stress Disorder (PTSD);
  - e. Schizotypal personality disorder; or
  - f. Borderline personality disorder.
21. **“Trauma Informed Services”** means Services that are reflective of the consideration and evaluation of the role that trauma plays in the lives of people seeking Community Mental Health and Addiction Treatment, Recovery, & Prevention Services, including recognition of the traumatic effect of misdiagnosis and coercive treatment. Services are responsive to the vulnerabilities of trauma survivors and are delivered in a way that avoids inadvertent re-traumatization and facilitates individual direction of services.
22. **“Underexpenditure”** means funds disbursed by County under this Contract that remain unexpended at Contract termination or expiration.

**EXHIBIT B  
SCOPE OF WORK**

**Background**

As part of Clackamas County’s Behavioral Health Redesign, which began in 2009, Clackamas Behavioral Health Division committed to the development and implementation of a Peer Delivered Services System of Care for children, families, transition age youth, and adults receiving mental health and addiction services.

The term “peer” refers to a person who self-identifies as an individual who has lived experience of a mental health condition and/or an addiction and is successfully living in recovery. Peers provide support to an individual who has similar lived experiences. Peer support services are developed by peers for peers.

Family peer support refers to support activities provided by a person who has had similar lived experience raising a child who has experienced a mental health condition and/or addiction. The support services provided have been developed by family members for family members.

The supports provided are defined by the person/family asking for support. The individual/family defines their interests and goals and sets tasks to achieve those goals. The peer provides the support needed to complete those tasks and achieve the goals. Peer support services are designed to be flexible and community-based to meet the unique needs of each individual/family.

**Statement of Work**

Contractor shall:

1. Provide:
  - a. 1.0 FTE Peer Support Specialist. Peer Support Specialist must have lived experience specific to mental health, addictions, and navigation of treatment and support resources.
  - b. Supervision of Peer Support Specialist to be provided by a qualified peer supervisor provided by Contractor.
2. Provide peer support services to the following population(s):
  - a. Adults receiving care coordination services from Clackamas County Behavioral Health Division
3. Assist and support individuals in developing their own plan of care.
4. Peer Support Specialist(s) may also provide at the request of the individual being served:
  - a. Support in navigating service systems and identifying resources.
  - b. Assistance in accessing substance use/abuse treatment programs, support groups, and other resources in the community at the individual’s request.
  - c. Provide referrals to other peer support resources as appropriate or requested by the individual.
  - d. Assist in identifying natural supports within the individual’s community.
5. Write a brief note describing support service provided and any follow up support to be provided.
6. Provide administrative and operational oversight of Peer Support staff that includes:
  - a. Training and continuing education
  - b. Schedule coordination
  - c. Supervision
7. Participate in appropriate system partner and/or COUNTY behavioral health division meetings.
8. Participate in COUNTY technical assistance activities to expand and strengthen the peer delivery system.
9. Perform exclusion list checks at hire and monthly of all employees, contractors, volunteers, interns, and any other persons providing, arranging, or paying for behavioral health services paid

**The Mental Health Association of Oregon – Personal Services Contract (CMHP) #9016**

in whole or in part with Medicaid dollars, against the Office of Inspectors (OIG) General Exclusions Database and the System for Award Management (SAM) Exclusions Database. Provider will maintain monthly verification of this check.

10. Ensure that Contractor’s employees and subcontractors, if permitted, maintain active licenses/certifications via a monitoring process with the licensing board including OHA’s Traditional Health Worker Registry.

**Standards of Work**

1. Work in collaboration with the County to promote a recovery oriented support system that focuses on hope, choice, personal responsibility, and self-determination.
2. Reinforce the values and culture of peer support through education and the modeling of strong support skills.
3. Use a whole health approach, not only addressing issues of mental health and substance use, but spiritual and physical health as requested by the individual served.

**Reporting Requirements**

Contractor shall prepare and submit quarterly summary reports on Contract activities no later than thirty (30) calendar days after the end of the quarter.

<b>Reporting Schedule</b>		
	<b>Reporting Period</b>	<b>Report Due</b>
<b>1<sup>st</sup> Report</b>	January 1 – March 31	No later than April 30
<b>2<sup>nd</sup> Report</b>	April 1 – June 30	No later than July 30
<b>3<sup>rd</sup> Report</b>	July 1 – September 30	No later than October 30
<b>4<sup>th</sup> Report</b>	October 1 – December 31	No later than January 30

**County Reporting Requirements (Survey Monkey Report)**

People Served:

1. Total number of individuals served each quarter.
2. Number of new individuals served each quarter.
3. Number of individuals that concluded services each quarter.
4. Number of referrals to other peer supports this quarter (in need of more specialized support ie: LGBTQQ, youth vs. adult support, need for CRM services vs. mental health PSS/PWS, capacity, etc.)
  - a. Why was a new peer program needed?
  - b. Where was the new referral sent?

Experience of Support Services:

1. Engagement rate for individuals in support services (determined by number of individuals who had at least two (2) “kept” appointments/contacts with their PSS/PWS within six (6) weeks of referral)
2. Percentage of individuals receiving support that felt their overall wellness (whole health) was improved since working with a peer.
3. Percentage of individuals receiving support that felt their quality of life has improved since working with a peer.
4. Percentage of individuals that reported an increase in natural supports since working with a peer.
5. Percentage of individuals that report feeling accepted in their community since working with a peer.

**The Mental Health Association of Oregon – Personal Services Contract (CMHP) #9016**

6. Percentage of individuals that reported they would have returned to a higher level of care if not for peer support.
  - a. If an individual returned to a higher level of care, what was accessed (see Survey Monkey)

**Community Supports and Workforce Development:**

1. Number of support groups provided to individuals served
  - a. Number of people attending support groups
2. Number of workshops/educational opportunities for people served
  - a. Number of people attending workshops/educational opportunities
3. Number of outreach activities to potential referral sources
4. Number of program staff attending trainings, continuing education courses



**EXHIBIT C  
CMHP SERVICE ELEMENT**

**MHS 06 – CHOICE MODEL SERVICES**

**For purposes of this Contract the following definitions apply:**

- a. Acute Care Psychiatric Facility or Acute Care Psychiatric Hospital** means a hospital that provides 24 hour-a-day psychiatric, multi-disciplinary, inpatient or residential stabilization, care and treatment, for adults ages 18 years of age or older with serious psychiatric disabilities.
- b. Assertive Community Treatment (ACT)** mean an evidence-based practice designed to provide comprehensive treatment and support services to Individuals with Serious and Persistent Mental Illness (SPMI). ACT is intended to service Individuals who have serious functional impairments and who have not responded to traditional psychiatric outpatient treatment. ACT services are provided by a single multi-disciplinary team, which typically includes a psychiatrist, a nurse, and at least two case managers, and are designed to meet the individual needs of each Individual and to help keep the Individual in the community and out of a structured service setting, such as a residential or hospital care. ACT is characterized by:
  - i.** Low client to staff ratios;
  - ii.** Providing services in the community rather than in the office;
  - iii.** Shared caseloads among team members;
  - iv.** 24-hour staff availability
  - v.** Direct provision of all services by the team (rather than referring Individuals to other agencies); and
  - vi.** Time-unlimited services.
- c. Behavioral Health Treatment** means treatment for mental illness, substance use disorders, or problem gambling.
- d. County of Responsibility (COR)** mean the county in which an Individual most recently maintained a postal address, or if residence is otherwise indeterminate, the county where the Individual was last present before being transported to an acute psychiatric hospital such as where the Individual was placed on a police officer custody, director’s custody or transport custody. Incarceration or placement on an involuntary hold, at OSH or a licensed 24-hour facility, is not to be used to make this determination. OHA will determine COR if there is a disagreement between counties.
- e. Discharge Plan** means a written document prepared by the contractor beginning at admission and updated through the Discharge Planning process which identifies housing, treatment, and other services needed to support the continuity of care necessary to maintain the Individual’s stability in the community. This report shall combine information from the Individual, OSH, community providers, recovery plan, and other resources.
- f. Discharge Planning** means a process that begins upon admission to OSH or licensed residential setting and is based on the presumption that, with sufficient supports and services, all Individuals can live in an integrated community setting. Discharge planning is developed and implemented through a person-centered planning process in which the Individual has a primary role in creating, and is based on principles of self-determination.
- g. Exceptional Needs Care Coordination (ENCC)** mean a process-oriented activity to facilitate ongoing communication and collaboration with the Individual to arrange Services

## The Mental Health Association of Oregon – Personal Services Contract (CMHP) #9016

appropriate to their needs, preferences and choices. These functions include, but are not limited to:

- i. Facilitating communication between the Individual, family, natural supports and community resources, involved providers and agencies;
  - ii. Organizing, facilitating and participating in interdisciplinary team (IDT) meetings when the Individual is in the community;
  - iii. Emphasizing discharge planning in IDT meetings at OSH by collaborating with IDT members, providing recommendations towards discharge preparation and sharing revisions of the Discharge Plan;
  - iv. Providing for continuity of care by creating linkages to and managing transitions between levels of care and transitions for adults with SPMI; and
  - v. Facilitating all referrals from OSH with the goal of providing oversight and care coordination for Adults with SPMI.
- h. **Face-to-Face** means a personal interaction where both words can be heard and facial expressions can be seen in person or through telehealth services where there is a live streaming audio and video.
- i. **Home and Community-Based Services (HCBS)** means the 1915 (i) state Medicaid plan amendments that allows for the use of Medicaid funding for home-based habilitation, behavioral habilitation, and psychosocial rehabilitation services for qualified Medicaid recipients who have been diagnosed with a mental illness.
- j. **Home CCO** means enrollment in a Coordinated Care Organization (CCO) in a given service area, based upon an Individual's most recent permanent residency, determined at the time of original Oregon Health Plan eligibility determination or current point of CCO enrollment prior to hospitalization per enrollment requirements in OAR 410-141-3000 (40) and OAR 410-141-3060.
- k. **Individual or Client** means, with respect to a particular Service, any person who is enrolled in that Service, in whole or in part, with payments provided under this Contract.
- l. **In-Reach Services** means services delivered by community-based service providers to an Individual while at the Oregon State Hospital (OSH) or Acute Care Psychiatric Hospital to:
  - i. Maintain the Individual's connection to ongoing services and supports;
  - ii. Assist with stabilization and discharge planning; and
  - iii. Provide transition support for Individuals determined Ready to Transition from the OSH or determined appropriate for diversion from OSH while in an Acute Care Psychiatric Hospital.
- m. **Integrated Setting** means a setting that enables Individuals with disabilities to interact with non-disabled persons to the fullest extent possible. Integrated settings are those that provide Individuals with disabilities opportunities to live, work, and receive services in the greater community, like Individuals without disabilities. Integrated settings are:
  - i. Located in mainstream society;
  - ii. Offer access to community activities and opportunities at times, frequencies, and with persons of an Individual's choosing;
  - iii. Afford Individuals choice in their daily life activities; and
  - iv. Provide Individuals with disabilities the opportunity to interact with non-disable persons to the fullest extent possible.
- n. **Long-Term Psychiatric Care (LTPC)** means inpatient psychiatric services delivered in an Oregon State-operated Hospital after:
  - i. Usual and customary care has been provided in an acute inpatient hospital psychiatric care setting;
  - ii. The Individual continues to be successful in an alternative setting; and

- iii. The Individual continues to need psychiatric hospitalization services.
- o. **Oregon State Hospital (OSH)** means any campus of the Oregon State Hospital system.
- p. **Peer Delivered Services** means community-based services and supports provided by peers, and peer support specialists, to Individuals or family members with similar lived experience. These services are intended to support Individuals and families, to engage Individuals in ongoing treatment, and to live successfully in the community.
- q. **Ready To Transition (RTT)** means that, consistent with the scope of the order of commitment, the Individual’s discharge planning team has determined that a placement in the community is the most integrated setting appropriate for the Individual, and that the Individual was subject to a discharge planning process consistent with the definition in the Oregon Performance Plan, and as described in OAR 309-091-0035.
- r. **Recovery** means a process of change through which Individuals improve their health and wellness, live a self-directed life, and strive to reach their full potential.
- s. **Recovery Plan** means a written document created by the Individual and facilitated by a peer support specialist, or an alternative as determined by the Individual, to help identify the Individual’s strengths (e.g. knowledge gained from dealing with adversity, personal or professional roles, talents, personal traits) that can act as resources to the Individual and the Individual’s recovery planning team in pursuing personal and treatment goals.
- t. **Serious and Persistent Mental Illness (SPMI)** means the current Diagnostic and Statistical Manual, Fifth Edition (DSM-V) of the American Psychiatric Association diagnostic criteria for at least one of the following conditions, as a primary diagnosis for an adult 18 years of age or older:
  - i. Schizophrenia and other psychotic disorders;
  - ii. Major depressive disorder;
  - iii. Bipolar disorder;
  - iv. Anxiety disorders limited to OCD (Obsessive Compulsive Disorder) and PTSD (Post Traumatic Stress Disorder);
  - v. Schizotypal personality disorder; or
  - vi. Borderline personality disorder.
- u. **Supported Housing** means permanent housing with tenancy rights and support services that enables Individuals to attain and maintain integrated affordable housing. Support services offered to Individuals living in supported housing are flexible and are available as needed and desired, but are not mandated as a condition of obtaining tenancy. Individuals have a private and secure place to make their home, just like other members of the community, with the same rights and responsibilities. Supported Housing enables Individuals with disabilities to interact with individuals without disabilities to the fullest extent possible. Supported Housing is scattered site housing. To be considered Supported Housing, for buildings with two or three units, no more than one unit may be used to provide Supported Housing for Individuals with SPMI who are referred by OHA or its contractors, and for buildings or complexes with four or more units, no more than 25% of the units in a building or complex may be used to provide Supported Housing for Individuals with SPMI who are referred by OHA or its contractors. Supported Housing has no more than two Individuals in a given apartment or house, with a private bedroom for each Individual. If two people are living together in an apartment or house, the Individuals must be able to select their own roommates. Supported Housing does not include housing where providers can reject Individuals for placement due to medical needs or substance abuse history.
- v. **Voluntary by Guardian** means that an Individual’s legal guardian has signed consent for admission to an acute psychiatric facility, Oregon State Hospital, or licensed residential facility.

**1. Service Description**

- a.** Contractor shall offer oversight and care coordination for Adults with SPMI, as follows:
  - i.** Facilitate access to quality, individualized community-based services and supports so that Individuals with SPMI are served in the most integrated setting possible; and
  - ii.** Facilitate effective utilization of services and facility-based care in the community.
- b.** Contractor shall identify anticipated capacity needs across the system and communicate with Coordinated Care Organizations (CCO), Community Mental Health Programs (CMHP), and Oregon Health Authority (OHA).
- c.** The Contractor’s service area shall align primarily with the Home CCO and when no CCO is identified or the Home CCO has multiple MHS 06 Services contractors, then the service area will align with the COR as follows:
  - i.** Home CCO is the designated service are for Individuals who are:
    - 1.** CCO enrolled members;
    - 2.** CCO members at the time of referral to Oregon State Hospital (OSH); or
  - ii.** COR is the designated service area for Individuals who are:
    - 1.** Fee-For-Service Medicaid Eligible;
    - 2.** Uninsured, underinsured, not eligible for Medicaid, or have exhausted Medicaid services, including those who meet the criteria for the Citizen Alien Waived Medical Program;
    - 3.** Undocumented;
    - 4.** Privately insured;
    - 5.** Funded through Veterans administration; or
    - 6.** Other as approved by OHA.
- d.** Service Population
  - i.** Individuals who meet the following criteria, shall be offered Services through MHS 06 Services:
    - 1.** Have been civilly committed and admitted to OSH under ORS Chapter 426;
    - 2.** Have been civilly committed under ORS Chapter 426 and are referred to or at risk of being referred to OSH;
    - 3.** Admitted to OSH under guardian authorization; secured or non-secure licensed residential facility as defined in ORS 443.400 including licensed programs designated specifically for young adults in transition;
    - 4.** Are residing in a licensed adult foster home, as defined in ORS 443.705, due to SPMI; or
    - 5.** As directed by OHA.
  - ii.** Individuals who, due to SPMI, meet the following criteria shall also be offered Services per Contractor’s policies and procedures in Choice Model Services:
    - 1.** Are placed on outpatient commitment pursuant to ORS 426.127;
    - 2.** Are placed in assisted outpatient treatment pursuant to ORS 426.133;
    - 3.** Have transitioned from civil commitment pursuant to ORS 426.060 within the past 12 months;
    - 4.** Have been found to lack fitness to proceed pursuant to ORS 161.370;
    - 5.** Will end jurisdiction within the next six months or ended jurisdiction under the Psychiatric Security Review Board (PSRB) within the past 12 months;

6. Have been determined service eligible through the Department of Human Services (DHS), either through Aging & People with Disabilities (APD) or Intellectual/Developmental Disabilities (I/DD) Divisions to support the Behavioral Health Treatment service needs of Individuals determined service eligible for APD or I/DD; or
  7. Are at risk of meeting the above criteria without supports offered through Choice Model Services.
- e. Services
- i. Exceptional Needs Care Coordination as appropriate to the needs, preferences, and choices of each individual.
  - ii. Behavioral Health Treatment services and supports not funded through other sources including, but not limited to:
    1. Medicaid
    2. Medicare
    3. County Financial Assistance Agreements; or
    4. CCO Contracts.
  - iii. Activities to remove barriers and facilitate access to integrate services and supports, which are not funded through other sources. Especially when Individuals are being discharged from OHS and when establishing residence in Supported Housing. These activities may include, but are not limited to:
    1. Room and board payments;
    2. Rental assistance, security deposits, and application fees;
    3. Utility payments and deposits;
    4. Prescription or over-the-counter medications and medical supplies not covered by Medicaid or other sources;
    5. Transportation;
    6. Activities to facilitate the securing of guardianship services, including but not limited to:
      - a. Paying the costs of:
        - i. Court hearing to determine the necessity, continuation, or termination of a guardianship.
        - ii. Guardianship services to make decisions related to overseeing the care and supervision of an Individual.
      - b. If guardianship is expected to continue beyond a transitional period of time (6 months or less), than other payment options should be sought in order to maintain guardianship services.
    7. Activities to facilitate the securing of representative payee services; or
    8. Peer Delivered Services.
  - iv. Gather documents such as the Community Questionnaire, develop a preliminary discharge plan from OSH and sign for final authorization for the Long-Term Psychiatric Care referral
  - v. Other services and supports necessary to facilitate provision of services in the most integrated setting and the prevention of admission to higher levels of care.

## **2. Performance Requirements**

- a. Contractor shall provide the following services:
  - i. Exceptional Needs Care Coordination for Individuals served in Choice Model Services to facilitate access to services in the most integrated setting appropriate to the Individual's needs and strengths, including;

**The Mental Health Association of Oregon – Personal Services Contract (CMHP) #9016**

1. Care coordination and Discharge Planning for Individuals receiving services in licensed residential programs, even when placed outside the Contractor's service area.
  2. Facilitate access to community-based rehabilitative mental health treatment services that are recovery-oriented, culturally responsive, and geographically accessible.
  3. Facilitate access to Peer Delivered Services.
  4. Serve as the Single Point of Contact (SPOC) (OAR 309-019-0225) for all referrals from OSH to Assertive Community Treatment as described in OAR 309-019-0225 (25) Definition of SPOC in ACT Admission Process 309-019-0248.
  5. Collaborate with Acute Care Psychiatric Hospitals to divert Individuals approved for LTPC from admission to OSH and toward community-based services and supports, when indicated to be appropriate.
  6. Collaborate with the DSH, APD and I/DD Divisions to support the Behavioral Health Treatment service needs of Individuals determined service eligible for APD or I/DD.
  7. Coordinate the transition from forensic services for Individuals ending jurisdiction under the PSRB within six months and who will be served in Choice Model Services.
  8. Coordinate the transition from forensic services for Individuals found to lack fitness to proceed pursuant to ORS 161.370 and who will be enrolled in Choice Model Services; and
  9. Serve as a resource for community partners and service agencies in locating local community-based Behavioral Health Treatment services and supports.
- ii. Facilitate transition for Individuals with SPMI out of hospital settings and into the most integrated community settings by completing the following:
1. Hold a face-to-face meeting with each Individual within the Contractor's service area being referred to OSH from Acute Care Psychiatric Hospitals prior to being referred but no later than 72 hours from the date of approval for LTPC to identify services and supports necessary for community-based stabilization, and facilitate access to those services and supports in order to divert Individuals from admission to OSH whenever possible.
  2. Hold a face-to-face meeting with each Individual within the Contractor's service area who is civilly committed, and to the extent practical for Voluntary by Guardian, admitted to OSH within seven calendar days of admission.
  3. Participate in OSH IDT meetings for each Individual within the Contractor's service area to update the Discharge Plan and to coordinate appropriate community-based services and supports.
  4. Arrange, advocate, and coordinate appropriate In-Reach Services from CCOs and community providers who are delegated or identified as having responsibility for providing mental health services upon discharge.
  5. Facilitate development of an initial Discharge Plan with ten (10) calendar days of admission to OSH and update the plan as appropriate after each IDT or discharge planning meeting with the Individual.

6. Coordinate and facilitate access to community-based resources of those civilly committed at OSH to support discharge from OSH within 72 hours of being determined RTT whenever possible for Individuals with SPMI who have been civilly committed, ensuring that:
  - a. No less than 90% of Individuals shall be discharged within twenty (20) calendar days of being determined RTT.
  - b. If not discharged within the above timeframe then each Individual shall be discharged no later than sixty (60) calendar days from the date placed on RTT.
7. Collaborate with OSH to verify that entitlement enrollments (e.g. Medicaid, Medicare, SSI/SSDI) are in place and anticipated to be active upon discharge.
8. For Individuals not receiving Choice Model Services directly, collaborate and serve as a resource to support Discharge Planning for Individuals;
  - a. Determine services eligible for APD or I/DD;
  - b. Under the jurisdiction of ORS 161.370 to determine fitness to proceed; or
  - c. Under the jurisdiction of the PSRB.

**3. Reporting Requirement**

Contractor shall provide timely and relevant information to County as needed to enable County to submit reports to the State of Oregon on the delivery of all Services supported with funds provided through this Contract.

**4. Confirmation of Performance and Reporting Requirements**

Contractor shall be required to demonstrate through the data properly reported in accordance with the “Reporting Requirements” section above and any reporting requirement contained in Exhibit B, Scope of Work, of this Contract, how funds provided for MHS 06 Services were utilized consistent with the terms and limitations herein to meet the performance requirement of this Service Description, and that the Contractor may be subject to the monitoring and review of performance requirements and quality measures by OHA.

**EXHIBIT D  
COMPENSATION**

- a. Payment for all Work performed under this Contract shall be subject to the provisions of ORS 293.462 and shall not exceed the total maximum sum of **\$284,190.50**.

Contractor shall be compensated on a fixed rate basis of \$6,757.25 per month for the Contract's eighteen (18) month initial term. Should the renewal option be exercised, the fixed rate shall be \$6,773.33 per month for the resulting twenty-four (24) month term.

- b. Contractor shall submit **monthly invoices by the 10<sup>th</sup> day of the month** following the month Services were provided. The invoice shall include:

Contract #**9016**,  
Month of service,  
Total amount due for all Services provided during the month, and  
Total amount billed to date by Contractor prior to the current invoice.

If Contractor fails to present invoices in proper form within sixty (60) calendar days after the end of the month in which the services were rendered, Contractor waives any rights to present such invoice thereafter and to receive payment therefor.

All invoices and supporting documentation shall be sent by email or mail to:

[BHAP@clackamas.us](mailto:BHAP@clackamas.us) and [NCaster@clackamas.us](mailto:NCaster@clackamas.us)

Alternatively, invoices and supporting documentation may be mailed to:

Clackamas County Behavioral Health Division  
Accounts Payable  
2051 Kaen Road, Suite #154  
Oregon City, Oregon 97045

When submitting electronically, designate Contractor name and Contract #**9016** in the subject of the email.

- c. Payments shall be made to Contractor, within thirty (30) days, following the County's review and approval of invoices submitted by Contractor. Contractor shall not submit invoices for, and the County will not pay, any amount in excess of the maximum compensation amount set forth above. If this maximum compensation amount is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment.



**EXHIBIT E  
INSURANCE**

During the term of this Contract, Contractor shall maintain in full force at its own expense, each insurance noted below:

**1. Workers Compensation.** Contractor, its subcontractors, if any, and all employers providing work, labor, or materials under this Contract are subject employers under the Oregon Workers' Compensation Law, and shall either comply with ORS 656.017, which requires said employers to provide workers' compensation coverage that satisfies Oregon law for all their subject workers, or shall comply with the exemption set out in ORS 656.126. Contractors shall maintain employer's liability insurance with limits of \$500,000 each accident, \$500,000 disease each employee, and \$500,000 each policy limit.

**2. Professional Liability.**  **Required by County**  **Not required by County**

Professional Liability insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each claim, incident, or occurrence, with an annual aggregate limit of \$2,000,000. This is to cover damages because of personal injury, bodily injury, death, or damage to property caused by error, omission or negligent acts related to the professional services to be provided under this Contract. The policy must provide extending reporting period coverage for claims made within two years after the contract is completed.

If this box is checked Professional Liability limits shall be \$2,000,000 per occurrence and \$4,000,000 in annual aggregate.

**3. General Liability.**  **Required by County**  **Not required by County**

General Liability insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each claim, incident, or occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage for the protection of the **County and the State of Oregon, and its officers, elected officials, agents, and employees.** It shall include contractual liability coverage for the indemnity provided under this Contract.

If this box is checked General Liability limits shall be \$2,000,000 per occurrence and \$4,000,000 in annual aggregate for bodily injury/death, and \$200,000 per occurrence and \$600,000 annual aggregate for property damage.

**4. Automobile Liability.**  **Required by County**  **Not required by County**

**Commercial Automobile Liability** insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each accident for Bodily Injury, Death, and Property Damage, including coverage for owned, hired, or non-owned vehicles, as applicable.

**Commercial Automobile Liability** insurance limits shall be \$2,000,000 per occurrence and \$4,000,000 in annual aggregate for bodily injury/death, and \$200,000 per occurrence and \$600,000 annual aggregate for property damage.

**Personal Automobile Liability** insurance limits shall be not less than \$250,000/occurrence, \$500,000/aggregate, and \$100,000/property damage.

**5. Physical Abuse and Molestation Liability.**  **Required by County**  **Not required by County**

**The Mental Health Association of Oregon – Personal Services Contract (CMHP) #9016**

Physical Abuse and Molestation Liability insurance with a combined single limit of not less than \$1,000,000 each claim, incident, or occurrence, with an annual aggregate limit of \$2,000,000. Coverage shall be provided through either general liability or professional liability coverage. Proof of Sex Abuse/Molestation insurance coverage must be provided.

**6. Privacy and Network Security.**     **Required by County**     **Not required by County**

Privacy and Network Security coverages shall be obtained and maintained to provide protection against liability for (a) system attack; (b) denial or loss of service attacks; (c) spread of malicious software code; (d) unauthorized access and use of computer systems; and (e) liability from the loss or disclosure of confidential data with limit of \$1,000,000 per claim/annual aggregate.

If this box is checked Privacy and Network Security limit shall be at least \$4,000,000.

**7. Additional Insured Provision.** The insurance, other than Professional Liability (except to the extent it only applies to Commercial General Liability exposures), Workers' Compensation, Personal Automobile Liability and Pollution Liability Insurance, shall include **Clackamas County and the State of Oregon, and their officers, elected officials, agents, and employees** as an additional insured.

**8. Primary Coverage Clause.** Contractor's insurance shall apply as primary and will not seek contribution from any insurance or self-insurance maintained by, or provided to, the additional insureds listed above. This must be noted on the insurance certificate.

**9. Cross-Liability Clause.** A cross-liability clause or separation of insureds condition will be included in all general liability, professional liability, pollution and errors and omissions policies required by this Contract.

**10. "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 Contract, for a minimum of twenty-four (24) months following the later of: (i) the Contractor's completion and County's acceptance of all Services required under the Provider Contract; or (ii) the expiration of all warranty periods provided under the Contract. 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 County may grant approval of the maximum "tail" coverage period reasonably available in the marketplace. If County approval is granted, the Contractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.

**11. Self-insurance.** Contractor may fulfill one or more of its insurance obligation herein through a program of self-insurance, provided that Contractor's self-insurance program complies with all applicable laws, provides coverage equivalent in both type and level to that required in this Exhibit, and is reasonably acceptable to County. Contractor shall furnish an acceptable insurance certificate to County for any insurance coverage required by this Contract that is fulfilled through self-insurance. Stop-loss insurance and reinsurance coverage against catastrophic and unexpected expenses may not be self-insured.

**12. Certificates of Insurance.** Contractor shall furnish evidence of the insurance required in this Contract. Contractor will maintain the insurance in full force throughout the duration of this Contract. No Contract shall be in effect until the required certificates have been received, approved, and accepted by County. A renewal certificate will be sent to County ten (10) days prior to coverage expiration. The insurance for general liability and commercial automobile liability must include an

**The Mental Health Association of Oregon – Personal Services Contract (CMHP) #9016**

endorsement naming **Clackamas County and the State of Oregon, and their officers, elected officials, agents, and employees** as additional insureds with respect to the Work under this Contract. If requested, complete copies of insurance policies, trust agreements, etc. shall be provided to the County. The Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions and/or self-insurance.

Certificate Holder should be:

Clackamas County, 2051 Kaen Road, Suite 154, Oregon City, Oregon 97045

Certificates of Insurance should be submitted electronically or by mail to:

[BHContracts@clackamas.us](mailto:BHContracts@clackamas.us)

Clackamas County  
Contracts Administration  
2051 Kaen Road, Suite 154  
Oregon City, OR 97045

- 13. Insurance Carrier Rating.** Coverages provided by the Contractor must be underwritten by an insurance company deemed acceptable by the County. Insurance coverage shall be provided by companies admitted to do business in Oregon or, in the alternative, rated A- or better by Best's Insurance Rating. The County reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.
- 14. Waiver of Subrogation.** Contractor agrees to waive their rights of subrogation arising from the Work performed under this Contract.
- 15. Notice of cancellation or change.** There shall be no cancellation, material change, exhaustion of aggregate limits, reduction of limits, or intent not to renew the insurance coverage(s) without thirty (30) days written notice from the Contractor or its insurer(s) to the County at the following address: Clackamas County Behavioral Health Division, 2051 Kaen Road, Suite 154, Oregon City, OR 97045 or [BHContracts@clackamas.us](mailto:BHContracts@clackamas.us).
- 16. Insurance Compliance.** The County will be entitled to enforce Contractor compliance with the insurance requirements, and will 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, terminating the Contract as permitted by the Contract, or pursuing legal action to enforce the insurance requirements. In no event shall County permit a Contractor to work under this Contract when the County is aware that the Contractor is not in compliance with the insurance requirements.

**EXHIBIT F  
CMHP REQUIRED FEDERAL TERMS AND CONDITIONS**

Contractor shall comply with the following federal requirements, when federal funding is being used to fund this Contract. For purposes of this Contract, all references to federal and state laws are references to federal and state laws as they may be amended from time to time.

- 1. Miscellaneous Federal Provisions.** Contractors shall comply with all federal laws, regulations, and executive orders applicable to the Contract or to the delivery of Services. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Contract: (a) Title VI and VII of the Civil Rights Act of 1964, as amended, (b) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, (c) the Americans with Disabilities Act of 1990, as amended, (d) Executive Order 11246, as amended, (e) the Health Insurance Portability and Accountability Act of 1996, as amended, (f) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended, (g) the Vietnam Era Veterans’ Readjustment Assistance Act of 1974, as amended, (h) all regulations and administrative rules established pursuant to the foregoing laws, (i) all other applicable requirements of federal civil rights and rehabilitation statutes, rules and regulations, and (j) all federal law governing operation of Community Mental Health Programs, including without limitation, all federal laws requiring reporting of Client abuse. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Contract and required by law to be so incorporated. No federal funds may be used to provide Services in violation of 42 U.S.C. 14402.
- 2. Equal Employment Opportunity.** Contractor shall comply with Executive Order 11246, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375, and as supplemented in U.S. Department of Labor regulations (41 CFR Part 60).
- 3. Clean Air, Clean Water, EPA Regulations.** If this Contract, including amendments, exceeds \$150,000 Contractor shall comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 7606), the Federal Water Pollution Control Act as amended (commonly known as the Clean Water Act) (33 U.S.C. 1251 to 1387), specifically including, but not limited to Section 508 (33 U.S.C.1368), Executive Order 11738, and Environmental Protection Agency regulations (2 CFR Part 1532), which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to OHA, United States Department of Health and Human Services and the appropriate Regional Office of the Environmental Protection Agency. Contractors shall include in all contracts with subcontractors receiving more than \$150,000, language requiring the subcontractor to comply with the federal laws identified in this section.
- 4. Energy Efficiency.** Contractors shall comply with applicable mandatory standards and policies relating to energy efficiency that are contained in the Oregon energy conservation plan issued in compliance with the Energy Policy and Conservation Act 42 U.S.C. 6201 et.seq. (Pub. L. 94-163).
- 5. Truth in Lobbying.** By signing this Contract, Contractor certifies, to the best of the Contractor’s knowledge and belief that:

**The Mental Health Association of Oregon – Personal Services Contract (CMHP) #9016**

- a.** No federal appropriated funds have been paid or will be paid, by or on behalf of Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative contract, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative contract.
- b.** If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the Contractor shall complete and submit Standard Form LLL, “Disclosure Form to Report Lobbying” in accordance with its instructions.
- c.** Contractor shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients and subcontractors shall certify and disclose accordingly.
- d.** This certification is a material representation of fact upon which reliance was placed when this Contract was made or entered into. Submission of this certification is a prerequisite for making or entering into this Contract imposed by section 1352, Title 31 of the U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- e.** No part of any federal funds paid to Contractor under this Contract shall be used, other than for normal and recognized executive legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, electronic communication, radio, television, or video presentation designed to support or defeat the enactment of legislation before the United States Congress or any State or local legislature itself, or designed to support or defeat any proposed or pending regulation, administrative action, or order issued by the executive branch of any State or local government.
- f.** No part of any federal funds paid to Contractor under this Contract shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence the enactment of legislation, appropriations, regulation, administrative action, or Executive order proposed or pending before the United States Congress or any State government, State legislature or local legislature or legislative body, other than for normal and recognized executive-legislative relationships or participation by an agency or officer of a State, local or tribal government in policymaking and administrative processes within the executive branch of that government.
- g.** The prohibitions in subsections (e) and (f) of this section shall include any activity to advocate or promote any proposed, pending or future Federal, State or local tax increase, or any proposed, pending, or future requirement or restriction on any legal consumer product, including its sale or marketing, including but not limited to the advocacy or promotion of gun control.

**The Mental Health Association of Oregon – Personal Services Contract (CMHP) #9016**

- h.** No part of any federal funds paid to Contractor under this Contract may be used for any activity that promotes the legalization of any drug or other substance included in schedule I of the schedules of controlled substances established under section 202 of the Controlled Substances Act except for normal and recognized executive congressional communications. This limitation shall not apply when there is significant medical evidence of a therapeutic advantage to the use of such drug or other substance or that federally sponsored clinical trials are being conducted to determine therapeutic advantage.
- 6. Resource Conservation and Recovery.** Contractor shall comply with all mandatory standards and policies that relate to resource conservation and recovery pursuant to the Resource Conservation and Recovery Act (codified at 42 U.S.C. 6901 et. seq.). Section 6002 of that Act (codified at 42 U.S.C. 6962) requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency. Current guidelines are set forth in 40 CFR Part 247.
- 7. Audits.** Subrecipients, as defined in 45 CFR 75.2, shall comply with applicable Code of Federal Regulations (CFR) governing expenditure of federal funds. If a sub-recipient expends \$750,000 or more in federal funds (from all sources) in a fiscal year beginning on or after December 26, 2014, it shall have a single organization-wide audit conducted in accordance with the provisions of 45 CFR part 75, subpart F. Copies of all audits must be submitted to County within thirty (30) calendar days of completion. If a sub recipient expends less than \$750,000 in a fiscal year beginning on or after December 26, 2014, it is exempt from Federal audit requirements for that year. Records must be available for review or audit by appropriate officials.
- 8. Debarment and Suspension.** Contractor shall not permit any person or entity to be a provider if the person or entity is listed on the non-procurement portion of the General Service Administration’s “List of Parties Excluded from Federal Procurement or Non-procurement Programs” in accordance with Executive Orders No. 12549 and No. 12689, “Debarment and Suspension”. (See 2 CFR Part 180.) This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory authority other than Executive Order No. 12549. Providers with awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.
- 9. Drug-Free Workplace.** Contractor shall comply with the following provisions to maintain a drug-free workplace: (i) Contractor certifies that it will provide a drug-free workplace by publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance, except as may be present in lawfully prescribed or over-the-counter medications, is prohibited in Contractor’s workplace or while providing Services to OHA clients. Contractor’s notice shall specify the actions that will be taken by Contractor against its employees for violation of such prohibitions; (ii) Establish a drug-free awareness program to inform its employees about: The dangers of drug abuse in the workplace, Contractor’s policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations; (iii) Provide each employee to be engaged in the performance of Services under this Contract a copy of the statement mentioned in paragraph (i) above; (iv) Notify each employee in the statement required by paragraph (i) above

**The Mental Health Association of Oregon – Personal Services Contract (CMHP) #9016**

that, as a condition of employment to provide services under this Contract, the employee will: abide by the terms of the statement, and notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) calendar days after such conviction; (v) Notify OHA within ten (10) calendar days after receiving notice under subparagraph (iv) above from an employee or otherwise receiving actual notice of such conviction; (vi) Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program by any employee who is so convicted as required by Section 5154 of the Drug-Free Workplace Act of 1988; (vii) Make a good-faith effort to continue a drug-free workplace through implementation of subparagraphs (i) through (vi) above; (viii) Require any provider to comply with subparagraphs through (vii) above; (ix) Neither Contractor, or any of Contractor's employees, officers, agents may provide any Service required under this Contract while under the influence of drugs. For purposes of this provision, "under the influence" means: observed abnormal behavior or impairments in mental or physical performance leading a reasonable person to believe the Contractor or Contractor's employee, officer, agent has used a controlled substance, prescription or non-prescription medication that impairs the Contractor or Contractor's employee, officer, agent or Contractor's performance of essential job function or creates a direct threat to OHA clients or others. Examples of abnormal behavior include, but are not limited to: hallucinations, paranoia or violent outbursts. Examples of impairments in physical or mental performance include, but are not limited to: slurred speech, difficulty walking or performing job activities; and (x) Violation of any provision of this subsection may result in termination of this Contract.

10. **Pro-Children Act.** Contractor shall comply with the Pro-Children Act of 1994 (codified at 20 U.S.C. Section 6081 et. seq.).
  
11. **Medicaid Services.** To the extent Contractor provides any Service in which costs are paid in whole or in part by Medicaid, Contractor shall comply with all applicable federal and state laws and regulation pertaining to the provision of Medicaid Services under the Medicaid Act, Title XIX, 42 U.S.C. Section 1396 et. seq., including without limitation:
  - a. Keep such records as are necessary to fully disclose the extent of the services provided to Individuals receiving Medicaid assistance and shall furnish such information to any state or federal agency responsible for administering the Medicaid program regarding any payments claimed by such person or institution for providing Medicaid Services as the state or federal agency may from time to time request. 42 U.S.C. Section 1396a (a)(27); 42 CFR Part 431.107(b)(1) & (2).
  - b. Comply with all disclosure requirements of 42 CFR Part 1002.4(a) and 42 CFR 455 Subpart (B).
  - c. Maintain written notices and procedures respecting advance directives in compliance with 42 U.S.C. Section 1396 (a) (57) and (w), 42 CFR Part 431.107 (b) (4), and 42 CFR Part 489 subpart I.
  - d. Certify when submitting any claim for the provision of Medicaid Services that the information submitted is true, accurate and complete. Contractor shall acknowledge Contractor's understanding that payment of the claim will be from federal and state funds and that any falsification or concealment of a material fact may be prosecuted under federal and state laws.
  - e. Entities receiving \$5 million or more annually (under this Contract and any other

**The Mental Health Association of Oregon – Personal Services Contract (CMHP) #9016**

Medicaid agreement) for furnishing Medicaid health care items or services shall, as a condition of receiving such payments, adopt written fraud, waste and abuse policies and procedures and inform employees, providers, and agents about the policies and procedures in compliance with Section 6032 of the Deficit Reduction Act of 2005, 42 U.S.C. § 1396a (a) (68).

12. **ADA.** Contractor shall comply with Title II of the Americans with Disabilities Act of 1990 (codified at 42 U.S.C. 12131 et. seq.) in the construction, remodeling, maintenance and operation of any structures and facilities, and in the conduct of all programs, services and training associated with the delivery of Services.
13. **Agency-Based Voter Registration.** If applicable, Contractor shall comply with the Agency-based Voter Registration sections of the National Voter Registration Act of 1993 that require voter registration opportunities be offered where an Individual may apply for or receive an application for public assistance.
14. **Disclosure.**
  - a. 42 CFR 455.104 requires the State Medicaid agency to obtain the following information from any provider of Medicaid or CHIP services, including fiscal agents of providers and managed care entities: (1) the name and address (including the primary business address, every business location and P.O. Box address) of any person (Individual or corporation) with an ownership or control interest in the provider, fiscal agent or managed care entity; (2) in the case of an Individual, the date of birth and Social Security Number, or, in the case of a corporation, the tax identification number of the entity, with an ownership interest in the provider, fiscal agent or managed care entity or of any subcontractor in which the provider, fiscal agent or managed care entity has a 5% or more interest; (3) whether the person (Individual or corporation) with an ownership or control interest in the provider, fiscal agent or managed care entity is related to another person with ownership or control interest in the provider, fiscal agent or managed care entity as a spouse, parent, child or sibling, or whether the person (Individual or corporation) with an ownership or control interest in any subcontractor in which the provider, fiscal agent or managed care entity has a 5% or more interest is related to another person with ownership or control interest in the provider, fiscal agent or managed care entity as a spouse, parent, child or sibling; (4) the name of any other provider, fiscal agent or managed care entity in which an owner of the provider, fiscal agent or managed care entity has an ownership or control interest; and, (5) the name, address, date of birth and Social Security Number of any managing employee of the provider, fiscal agent or managed care entity.
  - b. 42 CFR 455.434 requires as a condition of enrollment as a Medicaid or CHIP provider, to consent to criminal background checks, including fingerprinting when required to do so under state law, or by the category of the provider based on risk of fraud, waste and abuse under federal law. As such, a provider must disclose any person with a 5% or greater direct or indirect ownership interest in the provider whom has been convicted of a criminal offense related to that person's involvement with the Medicare, Medicaid, or title XXI program in the last ten (10) years.
  - c. County or OHA reserves the right to take such action required by law, or where



County or OHA has discretion, it deems appropriate, based on the information received (or the failure to receive) from the provider, fiscal agent or managed care entity.

**15. Special Federal Requirements Applicable to Addiction Treatment, Recovery & Prevention Services for Agencies receiving Substance Abuse Prevention and Treatment (SAPT) Block Grant funds.**

**a. Order for Admissions:**

- (i) Pregnant women who inject drugs;
- (ii) Pregnant substance abusers;
- (iii) Other Individuals who inject drugs; and
- (iv) All others.

**b. Women’s or Parent’s Services.** If Contractor provides A&D 61 and A&D 62 Services, Contractor must:

- (1) Treat the family as a unit and admit both women or parent and their children if appropriate.
- (2) Provide or arrange for the following services to pregnant women and women with dependent children:
  - (a) Primary medical care, including referral for prenatal care;
  - (b) Pediatric care, including immunizations, for their children;
  - (c) Gender-specific treatment and other therapeutic interventions, e.g. sexual and physical abuse counseling, parenting training, and childcare;
  - (d) Therapeutic interventions for children in custody of women or parent in treatment, which address, but are not limited to, the children’s developmental needs and issues of abuse and neglect; and
  - (e) Appropriate case management services and transportation to ensure that women or parents and their children have access to the services in 1 through 4 above.

**c. Pregnant Women.** If Contractor provides any Addiction Treatment, Recovery & Prevention Services other than A&D 84, Problem Gambling, Client Finding Outreach Services, Contractor must:

- (1) Within the priority categories, if any, set forth in a particular Service Description, give preference in admission to pregnant women in need of treatment, who seek or are referred for and would benefit from such Services, within forty-eight (48) hours;
- (2) If Contractor has insufficient capacity to provide treatment Services to a pregnant woman, Contractor must refer the women to another Provider with capacity or if no available treatment capacity can be located, the outpatient Provider that the Individual is enrolled with will ensure that Interim Services are being offered. Counseling on the effects of alcohol and drug use on the fetus must be given within forty-eight (48) hours, including a referral for prenatal care; and
- (3) Perform outreach to inform pregnant women of the availability of treatment Services targeted to them and the fact that pregnant women receive preference in admission to these programs.

**d. Intravenous Drug Abusers.** If Contractor provides any Addiction Treatment, Recovery & Prevention Services other than A&D 84, Problem Gambling, Client Finding Outreach Services, Contractor must:

**The Mental Health Association of Oregon – Personal Services Contract (CMHP) #9016**

- (1) Within the priority categories, if any, set forth in a particular Service Description and subject to the preference for pregnant women described above, give preference in admission to intravenous drug abusers;
  - (2) Programs that receive funding under the grant and that treat Individuals for intravenous substance abuse, upon reaching ninety (90) percent of its capacity to admit Individuals to the program, must provide notification of that fact to the State within seven (7) calendar days;
  - (3) If Contractor receives a request for admission to treatment from an intravenous drug abuser, Contractor must, unless it succeeds in referring the Individual to another Provider with treatment capacity, admit the Individual to treatment not later than:
    - (a) Fourteen (14) calendar days after the request for admission to Contractor is made;
    - (b) One hundred-twenty (120) after the date of such request if no Provider has the capacity to admit the Individual on the date of such request and, if Interim Services are made available not less than forty-eight (48) hours after such request; or
    - (c) If Contractor has insufficient capacity to provide treatment Services to an intravenous drug abuser, refer the intravenous drug abuser to another Provider with capacity or if no available treatment capacity can be located, the outpatient provider that the Individual is enrolled with will ensure that interim services are being offered. If the Individual is not enrolled in outpatient treatment and is on a waitlist for residential treatment, the provider referring the Individual to residential services will make available counseling and education about human immunodeficiency virus (HIV) and tuberculosis (TB), risk of sharing needles, risks of transmission to sexual partners and infant, steps to ensure HIV and TB transmission does not occur, referral for HIV or TB treatment services, if necessary, within forty-eight (48) hours.
- e. Infectious Diseases.** If Contractor provides any Addiction Treatment, Recovery & Prevention Services, other than A&D 84, Problem Gambling, Client Finding Outreach Services, Contractor must:
- (1) Complete a risk assessment for infectious disease including human immunodeficiency virus (HIV) and tuberculosis (TB), as well as sexually transmitted diseases, based on protocols established by OHA, for every Individual seeking Services from Contractor; and
  - (2) Routinely make tuberculosis services available to each Individual receiving Services for alcohol/drug abuse either directly or through other arrangements with public or non-profit entities and, if Contractor denies an Individual admission on the bases of lack of capacity, refer the Individual to another provider of tuberculosis services.
  - (3) For purposes of (ii) above, “tuberculosis services” means:
    - (a) Counseling the Individual with respect to tuberculosis;
    - (b) Testing to determine whether the Individual has contracted such disease and testing to determine the form of treatment for the disease that is appropriate for the Individual; and
    - (c) Appropriate treatment services.
- f. OHA Referrals.** If Contractor provides any Addiction Treatment, Recovery &

Prevention Services other than A&D 84, Problem Gambling, Client Finding Outreach Services, Contractor must, within the priority categories, if any, set forth in a particular Service Description and subject to the preference for pregnant women and intravenous drug users described above, give preference in Addiction Treatment, Recovery & Prevention and Problem Gambling Service delivery to persons referred by OHA.

- g. Barriers to Treatment.** Where there is a barrier to delivery of any Addiction Treatment, Recovery & Prevention and Problem Gambling Service due to culture, gender, language, illiteracy, or disability, Contractor shall develop support services available to address or overcome the barrier, including:

  - (1)** Providing, if needed, hearing impaired or foreign language interpreters.
  - (2)** Providing translation of written materials to appropriate language or method of communication.
  - (3)** Providing devices that assist in minimizing the impact of the barrier.
  - (4)** Not charging clients for the costs of measures, such as interpreters, that are required to provide nondiscriminatory treatment.
- h. Misrepresentation.** Contractor shall not knowingly or willfully make or cause to be made any false statement or representation of a material fact in connection with the furnishing of items or Services for which payments may be made by County or OHA.
- i. Oregon Residency.** Addiction Treatment, Recovery & Prevention and Problem Gambling Services funded through this Contract, may only be provided to residents of Oregon. Residents of Oregon are Individuals who live in Oregon. There is no minimum amount of time an Individual must live in Oregon to qualify as a resident so long as the Individual intends to remain in Oregon. A child's residence is not dependent on the residence of his or her parents. A child living in Oregon may meet the residency requirement if the caretaker relative with whom the child is living is an Oregon resident.
- j. Tobacco Use.** If Contractor has Addiction Treatment, Recovery & Prevention Services treatment capacity that has been designated for children, adolescents, pregnant women, and women with dependent children, Contractor must implement a policy to eliminate smoking and other use of tobacco at the facilities where the Services are delivered and on the grounds of such facilities.
- k. Client Authorization.** Contractor must comply with 42 CFR Part 2 when delivering an Addiction Treatment, Recovery & Prevention Service that includes disclosure of Client information for purposes of eligibility determination. Contractor must obtain Client authorization for disclosure of billing information, to the extent and in the manner required by 42 CFR Part 2, before a Disbursement Claim is submitted with respect to delivery of an Addiction Treatment, Recovery & Prevention Service to that Individual.

**16. Special Federal Requirements Applicable To Addiction Treatment, Recovery & Prevention Services for Contractors Receiving Temporary Assistance for Needy Families (TANF) Grant Funds.**

**Funding Requirements.** TANF may only be used for families receiving TANF, and for families at-risk of receiving TANF, and for the purpose of providing housing services (room and board) for Individuals who are dependent children ages eighteen (18) years or younger whose parent is in adult addiction residential treatment, so that the children may reside with their parent in the same treatment facility. Families at-risk of receiving TANF must:

**The Mental Health Association of Oregon – Personal Services Contract (CMHP) #9016**

- a. Include a dependent child age eighteen (18) years of age or under, who is living with a parent or caretaker relative. “Caretaker relative” means a blood relative of the child; stepmother, stepfather, stepbrother, or stepsister, or an individual who has legally adopted the child.
- b. Be an Oregon resident.
- c. Have income at or below 25% of the Federal Poverty Level.

Use of TANF block grant funds and state expenditures counted towards TANF MOE must meet the requirements of 45 CFR 263. Only non-medical services may be provided with TANF Block Grant Funds.

17. **Community Mental Health Block Grant (CFDA 93.958).** All funds, if any, awarded under this Contract for Community Mental Health Services are subject to the federal use restrictions and requirements set forth in Catalog of Federal Domestic Assistance Number 93.958 and to the federal statutory and regulatory restrictions imposed by or pursuant to the Community Mental Health Block Grant portion of the Public Health Services Act, 42 U.S.C. 300x-1 *et seq.*, and Contractor shall comply with those restrictions.
18. **Substance Abuse Prevention and Treatment (CFDA 93.959).** To the extent Contractor provides any Service in which costs are paid in whole or in part by the Substance Abuse, Prevention, and Treatment Block Grant, Contractor shall comply with federal rules and statutes pertaining to the Substance Abuse, Prevention, and Treatment Block Grant, including the reporting provisions of the Public Health Services Act (42 U.S.C. 300x through 300x-66) and 45 CFR 96.130 regarding the sale of tobacco products. Regardless of funding source, to the extent Contractor provides any substance abuse prevention or treatment services, Contractor shall comply with the confidentiality requirements of 42 CFR Part 2. CMHP may not use the funds received under this Contract for inherently religious activities, as described in 45 CFR Part 87.
19. **Information Required by 2 CFR Subtitle B with guidance at 2 CFR Part 200.** All required data elements in accordance with 45 CFR 75.352 are available at: <http://www.oregon.gov/oha/hsd/amh/Pages/federal-reporting.aspx>.
20. **Super Circular Requirements.** 2 CFR Part 200, or the equivalent applicable provision adopted by the awarding agency in 2 CFR Subtitle B, including but not limited to the following:
  - a. **Property Standards.** 2 CFR 200.313, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, which generally describes the required maintenance, documentation, and allowed disposition of equipment purchased with federal funds.
  - b. **Procurement Standards.** When procuring goods and services (including professional consulting services), applicable state procurement regulations found in the Oregon Public Contracting Code, ORS chapters 279A, 279B, and 279C or 2 CFR §§ 200.318 through 200.326, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, as applicable.
  - c. **Contract Provisions.** The contract provisions listed in 2 CFR Part 200, Appendix II, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, that are hereby incorporated into this Exhibit, are, to the extent applicable, obligations of Contractor.

**EXHIBIT G**  
**CMHP REQUIRED PROVIDER CONTRACT PROVISIONS**

- 1. Expenditure of Funds.** Contractor may expend the funds paid to Contractor under this Contract solely on the delivery of contracted services subject to the following limitations (in addition to any other restriction of limitations imposed by this Contract):
  - a.** Contractor may not expend on the delivery of Service any funds paid to Contractor under this Contract in excess of the amount reasonable and necessary to provide quality delivery of these Services.
  - b.** If this Contract requires Contractor to deliver more than one service, Contractor may not expend funds paid to Contractor under this Contract for a particular service on the delivery of any other service.
  - c.** If this Contract requires Contractor to deliver Addiction Treatment, Recovery & Prevention, and Problem Gambling Services, Contractor may not use the funds paid to Contractor under this Contract for such services to:
    - i.** Provide inpatient hospital services;
    - ii.** Make cash payment to intended recipients of health services;
    - iii.** Purchase or improve land, to purchase, construct or permanently improve (other than minor remodeling) any building or other facility or to purchase major medical equipment;
    - iv.** Satisfy any requirement for expenditure of non-federal funds as a condition for receipt of federal funds (whether the federal funds are received under this Contract or otherwise);
    - v.** Carry out any program prohibited by section 245(b) of the Health Omnibus Programs Extension Act of 1988 (codified at 42 U.S.C. 300ee-5), which generally prohibits funds provided under this Contract from being used to provide Individuals with hypodermic needles or syringes so that such Individuals may use illegal drugs, unless the Surgeon General of the Public Health Service determines that a demonstration needle exchange program would be effective in reducing drug abuse.
  - d.** Contractor may expend funds paid to Contractor under this Contract only in accordance with OMB Circulars or 45 CFR Part 75, as applicable on Allowable Costs. If Contractor expends \$750,000 or more in federal funds (from all sources) in a fiscal year beginning on or after December 26, 2014, it shall have a single organization-wide audit conducted in accordance with the provisions of 45 CFR Part 75, subpart F. If Contractor expends less than \$750,000 in a fiscal year beginning on or after that date, it is exempt from Federal audit requirements for that year. Records must be available for review or audit by appropriate officials. Contractor, if subject to this requirement, shall at Contractor's own expense submit to OHA a copy of, or electronic link to, its annual audit subject to this requirement covering the funds expended under this Contract and shall submit or cause to be submitted to OHA the annual audit of any subrecipient(s), contractor(s), or subcontractor(s) of Contractor responsible for the financial management of funds received under this Contract. Copies of all audits must be

submitted to OHA within thirty (30) calendar days of completion. Audit costs for audits not required in accordance with the Single Audit Act are unallowable. Contractor may not use the funds received under this Contract for inherently religious activities, as described in 45 CFR Part 87.

**2. Records Maintenance, Access and Confidentiality.**

- a. Access to Records and Facilities.** County, the Oregon Health Authority, the Secretary of State's Office of the State of Oregon, the Federal Government, and their duly authorized representatives shall have access to the books, documents, papers and records of Contractor that are directly related to this Contract, the funds paid to Contractor hereunder, or any services delivered hereunder for the purpose of making audits, examinations, excerpts, copies and transcriptions. In addition, Contractor shall permit authorized representatives of County and the Oregon Health Authority to perform site reviews of all services delivered by Contractor hereunder.
- b. Retention of Records.** Contractor shall retain and keep accessible all books, documents, papers, and records that are directly related to this Contract, the funds paid to Contractor hereunder or to any services delivered hereunder, for a minimum of six (6) years, or such longer period as may be required by other provisions of this Contract or applicable law, following the termination or expiration of this Contract. If there are unresolved audit or other questions at the end of the six (6) year period, Contractor shall retain the records until the questions are resolved.
- c. Expenditure Records.** Contractor shall document the expenditure of all funds paid to Contractor under this Contract. Unless applicable federal law requires Contractor to utilize a different accounting system, Contractor shall create and maintain all expenditure records in accordance with generally accepted accounting principles and in sufficient detail to permit County and the Oregon Health Authority to verify how the funds paid to Contractor under this Contract were expended.
- d. Client Records.** Unless otherwise specified in this Contract, Contractor shall create and maintain a client record for each client who receives services under this Contract. The client record must contain:
  - i.** Client identification;
  - ii.** Problem assessment;
  - iii.** Treatment, training and/or care plan;
  - iv.** Medical information when appropriate; and
  - v.** Progress notes including service termination summary and current assessment or evaluation instrument as designated by the Oregon Health Authority in administrative rules.

Contractor shall retain client records in accordance with OAR 166-150-0005 through 166-150-0215 (State Archivist). Unless OAR 166-150-0005 through 166-150-0215 requires a longer retention period, client records must be retained for a minimum of six (6) years from termination or expiration of this Contract.

- e. Safeguarding of Client Information.** Contractor shall maintain the confidentiality of client records as required by applicable state and federal law, including without limitation, ORS 179.945 to 179.507, 45 CRF Part 205, 45 CRF Part 2, any administrative rule adopted by the Oregon Health Authority, implementing the foregoing laws, and any written policies made available to Contractor by County or by the Oregon Health Authority. Contractor shall create and maintain written policies and procedures related to the disclosure of client information, and shall make such policies and procedures available to County and the Oregon Health Authority for review and inspection as reasonably requested by County or the Oregon Health Authority.
- f. Date Reporting.** All Individuals receiving Services with funds provided under this Contract must be enrolled and that Individual's record maintained in the Measures and Outcome Tracking System (MOTS) as specified in OHA's MOTS Reference Manual, located at: <http://www.oregon.gov/oha/amh/mots/Pages/resource.aspx>, and the "Who Reports in MOTS Policy", as stated follows:

**Which Behavioral Health Providers are Required to Report in MOTS?**

The data collection system for the Health Systems Division (HSD) is the Measures and Outcomes Tracking System or MOTS. In general, behavioral health providers who are either licensed or have a letter of approval from the HSD (or the former Addictions & Mental Health Division [AMH]), and receive public funds to provide treatment services are required to report to MOTS. In addition to the general rule above, there are four basic ways to classify who is required to submit data to MOTS:

- i.** Providers with HSD Agreements that deliver treatment services (this includes Community Mental Health Programs [CMHP], Local Mental Health Authorities [LMHA] and other types of community behavioral health providers); these programs should all have a license or letter of approval from the HSD or AMH;
- ii.** Providers that are subcontractors (can be a subcontractor of a CMHP or other entity that holds a contract with HSD or OHA, such as a Mental Health Organization [MHO], or a Coordinated Care Organization [CCO]);
- iii.** Providers that HSD does not contract with but are required to submit data to MOTS by State/Federal statute or rule; these include DUII providers and methadone maintenance providers; and
- iv.** Providers that contract with other governmental agencies (e.g., Oregon Youth Authority [OYA] or the Department of Corrections [DOC] to deliver mental health and/or substance abuse services).

NOTE: Primary care physicians that provide a single service on behalf of the CMHP are not required to report the MOTS status or service level data.

If there are any questions, contact MOTS Support at [MOTS.Support@state.or.us](mailto:MOTS.Support@state.or.us).

- 3. Alternative Formats of Written Materials.** In connection with the delivery of Services, Contractor shall:

**The Mental Health Association of Oregon – Personal Services Contract (CMHP) #9016**

- a. Make available to a Client, without charge to the Client, upon the Client's, the County's or the Oregon Health Authority's request, an and all written materials in alternate, if appropriate, formats as required by the Oregon Health Authority's administrative rules or by the Oregon Health Authority's written policies made available to Contractor.
- b. Make available to a Client, without charge to the Client, upon the Client's, County's or the Oregon Health Authority's request, any and all written materials in the prevalent non-English languages in the area served by the Contractor.
- c. Make available to a Client, without charge to the Client, upon the Client's, County's or the Oregon Health Authority's request, oral interpretation services in all non-English languages in the area served by Contractor.
- d. Make available to a Client with hearing impairments, without charge to the Client, upon the Client's, County's or the Oregon Health Authority's request, sign language interpretation services and telephone communications access services.

For purposes of the foregoing, "written material" includes, without limitation, all written materials created or delivered in connection with the services and all Contractor contracts related to this Contract. The County may develop its own forms and materials and with such forms and materials the County shall be responsible for making them available to a Client, without charge to the Client or OHA, in the prevalent non-English language. OHA shall be responsible for making its forms and materials available, without charge to the Client or CMHP, in the prevalent non-English language.

**4. Reporting Requirements.** Contractor shall prepare and furnish the following information to County and the Oregon Health Authority when a service is delivered under this Contract.

- a. Client, service and financial information as specified in the applicable Service Description attached hereto and incorporated herein by this reference.
- b. All additional information and reports that County or the Oregon Health Authority reasonably requests.

**5. Compliance with Law.** Contractor shall comply with all state and local laws, regulations, executive orders and ordinances applicable to the Contract or to the delivery of services hereunder. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Contract:

- a. all applicable requirements of state civil rights and rehabilitation statutes, rules and regulations;
- b. all state laws governing operation of community mental health programs, including without limitation all administrative rules adopted by the Oregon Health Authority related to community mental health programs or related to client rights, OAR 943-005-0000 through 943-005-0070, prohibiting discrimination against Individuals with disabilities;
- c. all state laws requiring reporting of client abuse; and



**The Mental Health Association of Oregon – Personal Services Contract (CMHP) #9016**

- d. ORS 659A.400 to 659A.409, ORS 659A.145 and all regulations and administrative rules established pursuant to those laws in the construction, remodeling, maintenance and operation of any structures and facilities, and in the conduct of all programs, services and training associated with the delivery of services under this Contract.

The laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Contract and required by law to be so incorporated. All employers, including Contractor, that employ subject workers who provide services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. In addition, Contractor shall comply, as if it were County thereunder, with the federal requirements set forth in **Exhibit F, Required Federal Terms and Conditions**, to the certain 2019-2021 Intergovernmental Agreement for the Financing of Community Mental Health, Addiction Treatment, Recovery & Prevention, and Problem Gambling Services between County and the Oregon Health Authority dates as of July 1, 2019, which Exhibit is incorporated herein by this reference. For purposes of the Contract, all references in this Contract to federal and state laws are references to federal and state laws as they may be amended from time to time.

6. Unless Contractor is a State of Oregon governmental agency, Contractor agrees that it is an independent contractor and not an agent of the State of Oregon, the Oregon Health Authority or County.
7. To the extent permitted by applicable law, Contractor shall defend (in the case of the state of Oregon and the Oregon Health Authority, subject to ORS Chapter 180), save and hold harmless the State of Oregon and Clackamas County, and their officers, employees, and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of, or relating to the operations of the Contractor, including but not limited to the activities of Contractor or its officers, employees, subcontractors or agents under this Contract.
8. Contractor understands that Contractor may be prosecuted under applicable federal and state criminal and civil laws for submitting false claims, concealing material facts, misrepresentation, falsifying data system input, other acts of misrepresentation, or conspiracy to engage therein.
9. Contractor shall only conduct transactions that are authorized by the County for transactions with the Oregon Health Authority that involve County funds directly related to this Contract.
10. Contractor(s) that are not units of local government as defined in ORS 190.003 shall obtain, at Contractor's expense, and maintain in effect with respect to all occurrences taking place during the term of the Contract, insurance requirements as defined in the Contract and incorporated herein by this reference (**Exhibit E, Insurance**).
11. Contractor(s) that are not units of local government as defined in ORS 190.003, shall 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 not 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 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

**The Mental Health Association of Oregon – Personal Services Contract (CMHP) #9016**

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.

**12.** Contractor shall include sections 1 through 11, in substantially the form set forth above, in all permitted Contractor contracts under this Contract.

**13. Ownership of Intellectual Property.**

- a.** Except as otherwise expressly provided herein, or as otherwise required by state or federal law, OHA and the County will not own the right, title and interest in any intellectual property created or delivered by the Contractor in connection with the Services. With respect to that portion of the intellectual property that the Contractor owns, Contractor grants to OHA and the County a perpetual, worldwide, non-exclusive, royalty-free and irrevocable license, subject to any provisions in the Contract that restrict or prohibit dissemination or disclosure of information, to: (1) use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the intellectual property; (2) authorize third parties to exercise the rights set forth in Section 13.a.(1) on OHA and the County's behalf; and (3) sublicense to third parties the rights set forth in Section 13.a.(1).
  
- b.** If state or federal law requires that OHA or County grant to the United States a license to any intellectual property, or if state or federal law requires that OHA or the United States own the intellectual property, then Contractor shall execute such further documents and instruments as OHA may reasonably request in order to make any such grant or to assign ownership in the intellectual property created or delivered by Contractor in connection with the Services, OHA will grant a perpetual, worldwide, non-exclusive, royalty-free and irrevocable license, subject to any provisions in the Contract that restrict or prohibit dissemination or disclosure of information, to Contractor to use, copy distribute, display, build upon and improve the intellectual property.

**EXHIBIT H  
BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement is entered into as of **January 1, 2020** (“Effective Date”) by and between **Clackamas County, a political subdivision of the State of Oregon, on behalf of its Health, Housing and Human Services, Behavioral Health Division** (“Covered Entity”) and **The Mental Health Association of Oregon** (“Business Associate”) in conformance with the Health Insurance Portability and Accountability Act of 1996, and its regulations (“HIPAA”).

**RECITALS**

**Whereas**, the Covered Entity has engaged the services of the Business Associate, as defined under 45 CFR §160.103, for or on behalf of the Covered Entity;

**Whereas**, the Covered Entity may wish to disclose Individually Identifiable Health Information to the Business Associate in the performance of services for or on behalf of the Covered Entity as described in a Services Agreement (“Agreement”);

**Whereas**, such information may be Protected Health Information (“PHI”) as defined by the HIPAA Rules promulgated in accordance with the Administrative Simplification provisions of HIPAA;

**Whereas**, the Parties agree to establish safeguards for the protection of such information;

**Whereas**, the Covered Entity and Business Associate desire to enter into this Business Associate Agreement to address certain requirements under the HIPAA Rules;

**Now, Therefore**, the parties hereby agree as follows:

**SECTION I – DEFINITIONS**

- 1.1 “Breach” is defined as any unauthorized acquisition, access, use or disclosure of Unsecured PHI, unless the Covered Entity demonstrates that there is a low probability that the PHI has been compromised. The definition of Breach excludes the following uses and disclosures:
  - 1.1.1 Unintentional access by a Covered Entity or Business Associate in good faith and within an Workforce member’s course and scope of employment or placement;
  - 1.1.2 Inadvertent one time disclosure between Covered Entity or Business Associate Work force members; and
  - 1.1.3 The Covered Entity or Business Associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain the information.
- 1.2 “Covered Entity” shall have the meaning given to such term under the HIPAA Rules, including, but not limited to, 45 CFR §160.103.
- 1.3 “Designated Record Set” shall have the meaning given to such term under the HIPAA Rules, including, but not limited to 45 CFR §164.501.
- 1.4 “Effective Date” shall be the Effective Date of this Business Associate Agreement.
- 1.5 "Electronic Protected Health Information" or "Electronic PHI" shall have the meaning given to such term at 45 CFR §160.103, limited to information of the Covered Entity that the Business Associate creates, receives, accesses, maintains or transmits in electronic media on behalf of the Covered Entity under the terms and conditions of this Business Associate Agreement.
- 1.6 “Health Care Operations” shall have the meaning given to such term under the HIPAA Rules, including, but not limited to, 45 CFR §164.501.
- 1.7 “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules codified at 45 CFR Part 160 and Part 164.

**The Mental Health Association of Oregon – Personal Services Contract (CMHP) #9016**

- 1.8 “Individual” shall have the meaning given to such term in 45 CFR §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).
- 1.9 “Individually Identifiable Health Information” shall have the meaning given to such term under the HIPAA Rules, including, but not limited to 45 CFR §160.103.
- 1.10 “Protected Health Information” or “PHI” means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an Individual; the provision of health care to an Individual; or the past, present or future payment for the provision of health care to an Individual; and (ii) that identifies the Individual or with respect to which there is a reasonable basis to believe the information can be used to identify the Individual, and shall have the meaning given to such term under the HIPAA Rules, 45 CFR §160.103 and §164.501.
- 1.11 “Protected Information” shall mean PHI provided by the Covered Entity to Business Associate or created, maintained, transmitted or received by Business Associate on Covered Entity’s behalf.
- 1.12 “Required by Law” shall have the meaning given to such phrase in 45 CFR §164.103.
- 1.13 “Secretary” shall mean the Secretary of the Department of Health and Human Services or his or her designee.
- 1.14 “Security Incident” shall have the meaning given to such phrase in 45 CFR §164.304.
- 1.15 “Unsecured Protected Health Information” shall mean protected health information that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in accordance with 45 CFR §164.402.
- 1.16 Workforce means employees, volunteers, trainees, and other persons whose conduct, in the performance of work for a Covered Entity or Business Associate, is under the direct control of such Covered Entity or Business Associate, whether or not they are paid by the Covered Entity or Business Associate.

**SECTION II – OBLIGATIONS AND ACTIVITIES OF THE BUSINESS ASSOCIATE**

The Business Associate agrees to the following:

- 2.1 Not to use or further disclose PHI other than as permitted or required by this Business Associate Agreement or as Required by Law;
- 2.2 To use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to Electronic PHI, to prevent use or disclosure of PHI other than as provided for by this Business Associate Agreement;
- 2.3 To mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a use or disclosure of PHI by the Business Associate in violation of the requirements of this Business Associate Agreement;
- 2.4 To immediately report to the Covered Entity any use or disclosure of PHI not provided for by this Business Associate Agreement of which it becomes aware, including any Security Incident of which it becomes aware;
- 2.5 In accordance with 45 CFR §§164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any agent, including a subcontractor, that creates, receives, maintains, or transmits PHI on behalf of the Business Associate agrees in writing to the same restrictions, conditions and requirements that apply to the Business Associate with respect to such PHI;
- 2.6 To provide access, at the request of the Covered Entity, and in the time and manner designated by the Covered Entity, to PHI in a Designated Record Set, to the Covered Entity or, as directed by the Covered Entity, to the Individual or the Individual’s designee as necessary to meet the Covered Entity’s obligations under 45 CFR §164.524; provided, however, that this Section 2.6 is applicable

**The Mental Health Association of Oregon – Personal Services Contract (CMHP) #9016**

- only to the extent the Designated Record Set is maintained by the Business Associate for the Covered Entity;
- 2.7 To make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR §164.526 at the request of the Covered Entity or an Individual, and in the time and manner designated by the Covered Entity; provided, however, that this Section 2.7 is applicable only to the extent the Designated Record Set is maintained by the Business Associate for the Covered Entity;
  - 2.8 To make internal practices, books and records, including policies and procedures on PHI, relating to the use and disclosure of PHI received from, or created or received by the Business Associate on behalf of, the Covered Entity available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary's determining the Covered Entity's and the Business Associate's compliance with the HIPAA Rules;
  - 2.9 To document such disclosures of PHI and information related to such disclosures as would be required for the Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528;
  - 2.10 To provide to the Covered Entity or an Individual, in a time and manner designated by the Covered Entity, information collected in accordance with Section 2.9 of this Business Associate Agreement, to permit the Covered Entity to respond to a request by an accounting of disclosures of PHI in accordance with 45 CFR §164.528;
  - 2.11 That if it creates, receives, maintains, or transmits any Electronic PHI on behalf of the Covered Entity, it will implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic PHI, and it will ensure that any agents (including subcontractors) to whom it provides such Electronic PHI agrees to implement reasonable and appropriate security measures to protect the information. The Business Associate will report to the Covered Entity any Security Incident of which it becomes aware;
  - 2.12 To retain records related to the PHI hereunder for a period of six (6) years unless the Business Associate Agreement is terminated prior thereto. In the event of termination of this Business Associate Agreement, the provisions of Section V of this Business Associate Agreement shall govern record retention, return or destruction;
  - 2.13 To promptly notify the Covered Entity of a Breach of Unsecured PHI as soon as practicable, but in no case later than 10 calendar days, after the discovery of such Breach in accordance with 45 CFR §164.410. A Breach shall be treated as discovered as of the first day on which such Breach is known, or by exercising reasonable diligence would have been known, to any person, other than the person committing the Breach, who is an employee, officer, or agent of Business Associate. The notification shall include, to the extent possible, the identification of each Individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, used, or disclosed during the Breach in addition to the information required in Section V. In addition, Business Associate shall provide the Covered Entity with any other available information that the Covered Entity is required to include in the notification to the individual under 45 CFR §164.404(c); and
  - 2.14 To the extent Business Associate is to carry out one or more of the Covered Entity's obligations under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligations.

**SECTION III – THE PARTIES AGREE TO THE FOLLOWING PERMITTED USES AND DISCLOSURES BY THE BUSINESS ASSOCIATE:**

## **The Mental Health Association of Oregon – Personal Services Contract (CMHP) #9016**

- 3.1 Business Associate agrees to make uses and disclosures and requests for PHI consistent with the Covered Entity's minimum necessary policies and procedures.
- 3.2 Except as otherwise limited in this Business Associate Agreement, the Business Associate may use or disclose PHI to perform functions, activities or services for, or on behalf of, the Covered Entity as specified in the Services Agreement, provided that such use or disclosure would not violate the HIPAA Rules if done by the Covered Entity; and,
- 3.3 Except as otherwise limited in this Business Associate Agreement, the Business Associate may:
  - a. **Use for management and administration.** Use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate; and,
  - b. **Disclose for management and administration.** Disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that disclosures are Required by Law, or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as Required by Law or for the purposes for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

### **SECTION IV – NOTICE OF PRIVACY PRACTICES**

- 4.1 If requested, the Covered Entity shall provide the Business Associate with the notice of privacy practices that the Covered Entity produces in accordance with 45 CFR §164.520, as well as any changes to such notice. Covered Entity shall (a) provide the Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect the Business Associate's permitted or required uses and disclosures; (b) notify the Business Associate of any restriction to the use or disclosure of PHI that the Covered Entity has agreed to in accordance with 45 CFR §164.522, to the extent that such restrictions may affect the Business Associate's use or disclosure of PHI; and (c) not request the Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Standards if done by the Covered Entity, except as set forth in Section 3.2 above.

### **SECTION V – BREACH NOTIFICATION REQUIREMENTS**

- 5.1 With respect to any Breach, the Covered Entity shall notify each individual whose Unsecured PHI has been, or is reasonably believed by the Covered Entity to have been, accessed, acquired, used, or disclosed as a result of such Breach, except when law enforcement requires a delay pursuant to 45 CFR §164.412. This notice shall be:
  - a. Without unreasonable delay and in no case later than 60 calendar days after discovery of a Breach.
  - b. In plain language including and to the extent possible:
    - 1) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
    - 2) A description of the types of Unsecured PHI that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
    - 3) Any steps Individuals should take to protect themselves from potential harm resulting from the Breach;

- 4) A brief description of what the Covered Entity and/or Business Associate is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against any further Breaches; and,
  - 5) Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, web site, or postal address.
- c. By a method of notification that meets the requirements of 45 CFR §164.404(d).
  - d. Provided to the media when required under 45 CFR §164.406 and to the Secretary pursuant to 45 CFR §164.408.
- 5.2. Business Associate shall promptly provide any information requested by Covered Entity to provide the information described in Section 5.1.

## **SECTION VI – TERM AND TERMINATION**

6.1 **Term.** The term of this Business Associate Agreement shall be effective as of the date set forth above in the first paragraph and shall terminate when all of the PHI created, maintained, transmitted or received by the Business Associate on behalf of the Covered Entity, is destroyed or returned to the Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.

6.2 **Termination for Cause.** Upon the Covered Entity's knowledge of a material breach of this Business Associate Agreement by the Business Associate, the Covered Entity shall provide an opportunity for the Business Associate to cure the breach or end the violation. The Covered Entity shall terminate this Business Associate Agreement and the Services Agreement if the Business Associate does not cure the breach or end the violation within the time specified by the Covered Entity, or immediately terminate this Business Associate Agreement if cure is not reasonably possible.

If the Business Associate fails to cure a breach for which cure is reasonably possible, the Covered Entity may take action to cure the breach, including but not limited to obtaining an injunction that will prevent further improper use or disclosure of PHI. Should such action be taken, the Business Associate agrees to indemnify the Covered Entity for any costs, including court costs and attorneys' fees, associated with curing the breach.

Upon the Business Associate's knowledge of a material breach of this Business Associate Agreement by the Covered Entity, the Business Associate shall provide an opportunity for the Covered Entity to cure the breach or end the violation. The Business Associate shall terminate this Business Associate Agreement and the Services Agreement if the Covered Entity does not cure the breach or end the violation within the time specified by the Business Associate, or immediately terminate this Business Associate Agreement if the Covered Entity has breached a material term of this Business Associate Agreement if cure is not reasonably possible.

6.3 **Effect of Termination.**

a. **Return or Destruction of PHI.** Except as provided in Section 6.3(b), upon termination of this Business Associate Agreement, for any reason, the Business Associate shall return, or if agreed to by the Covered Entity, destroy all PHI received from the Covered Entity, or created, maintained or received by the Business Associate on behalf of the Covered Entity and retain no copies. This provision shall apply to PHI that is in the possession of subcontractors or agents of the Business Associate.

b. **Return or Destruction of PHI Infeasible.** In the event that the Business Associate determines that returning or destroying PHI is infeasible, the Business Associate shall provide to the Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction of the PHI is infeasible, the Business

Associate shall extend the protections of this Business Associate Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as the Business Associate maintains such PHI. In addition, the Business Associate shall continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to Electronic PHI to prevent use or disclosure of the PHI, for as long as the Business Associate retains the PHI.

## **SECTION VII – GENERAL PROVISIONS**

- 7.1 **Regulatory references.** A reference in this Business Associate Agreement to the HIPAA Rules or a section in the HIPAA Rules means that Rule or Section as in effect or as amended from time to time.
- 7.2 **Compliance with law.** In connection with its performance under this Business Associate Agreement, Business Associate shall comply with all applicable laws, including but not limited to laws protecting the privacy of personal information about Individuals.
- 7.3 **Amendment.** The Parties agree to take such action as is necessary to amend this Business Associate Agreement from time to time. All amendments must be in writing and signed by both Parties.
- 7.4 **Indemnification by Business Associate.** Business Associate agrees to indemnify, defend and hold harmless the Covered Entity and its commissioners, employees, directors, officers, subcontractors, agents or other members of its workforce, each of the foregoing hereinafter referred to as “Indemnified Party,” against all actual and direct losses suffered by the Indemnified Party and all liability to third parties arising from or in connection with Business Associate’s breach of Sections II and III of this Business Associate Agreement. Accordingly, on demand, Business Associate shall reimburse any Indemnified Party for any and all actual and direct losses, liabilities, fines, penalties, costs or expenses (including reasonable attorneys’ fees) which may for any reason be imposed upon any Indemnified Party by reason of any suit, claim, action, proceeding or demand by any third party which results for Business Associate’s breach hereunder. The obligation to indemnify any Indemnified Party shall survive the expiration or termination of this Agreement for any reason.
- 7.5 **Survival.** The respective rights and obligations of Business Associate under Section II of this Business Associate Agreement shall survive the termination of the Services Agreement and this Business Associate Agreement.
- 7.6 **Interpretation.** Any ambiguity in this Business Associate Agreement shall be resolved to permit Covered Entity to comply with the HIPAA Rules.

*[Signature Page for BAA Follows]*



**SIGNATURE PAGE FOR BUSINESS ASSOCIATE AGREEMENT**

The Parties hereto have duly executed this Agreement as of the Effective Date as defined here above.

**Business Associate**

**Covered Entity**

**THE MENTAL HEALTH ASSOCIATE OF  
OREGON**

**CLACKAMAS COUNTY**

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Authorized Signature

Date

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Richard Swift

Date

Health, Housing and Human Services

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Name / Title (Printed)

February 27, 2020

Board of County Commissioners  
Clackamas County

Members of the Board:

**Approval of a Personal Services Contract with Folk-Time, Inc. for  
Peer Support Drop-In Center and Rural Outreach**

Purpose/Outcome	Provides peer support services through a peer support drop-in center and rural outreach in Clackamas County.
Dollar Amount and fiscal Impact	Contract maximum payment is \$789,742.40. Initial term: \$333,830.40; renewal term, if awarded: \$455,912.00
Funding Source	No County General Funds are involved. State of Oregon, Community Mental Health Program funds.
Duration	Contracting through June 30, 2021 with an optional two (2) year extension.
Previous Board Action/Review	N/A
Strategic Plan Alignment	1. Provide coordination, assessment, outreach, and recovery services to Clackamas County residents experiencing mental health and addiction distress so they can achieve their own recovery goals 2. Ensure safe, healthy and secure communities.
Counsel Approval	February 19, 2020
Contact Person	Mary Rumbaugh, Director – Behavioral Health Division 503-742-5305
Contract No.	County Contract #2107 / BH Contract #9318

**BACKGROUND:**

The Behavioral Health Division of the Health, Housing & Human Services Department requests the approval of a Personal Service Contract with Folk-Time, Inc. for a Peer Support Drop-In Center and Rural Outreach in Clackamas County. Folk-Time will provide peer-directed mental health support services in Clackamas County through a peer support drop-in center, located in Oregon City, and rural outreach activities. Additionally, meals are provided at the drop-in center to individuals accessing services.

Folk-Time, Inc. is a nonprofit behavioral health agency that fosters healing by connecting individuals who share the experience of living with mental illness through peer support and community based activities. Behavioral Health has collaborated with Folk-Time, Inc. since 2010 for behavioral health services.

This Contract is effective January 1, 2020 and continues through June 30, 2021, with an option to extend for an additional two (2) years. The maximum value for the initial term of the Contract is \$333,830.40, should the option to extend be exercised the maximum value of the Contract is \$789,742.40.

**PROCUREMENT PROCESS:**

In accordance with Local Contract Review Board Rule C-047-0260 and applicable ORS, on July 15, 2019, the Clackamas County Procurement Office published a Request for Proposals (RFP) for Behavioral Health Peer Delivered Services. The RFP included this project and six others.

Proposers were allowed to bid on one or more projects included in the RFP. The RFP closed on August 1, 2019. This project received one proposal. An evaluation committee scored the proposal in accordance with the RFP scoring criteria and recommended that Folk-Time, Inc. be awarded this contract. Notice of Intent to Award was published on ORPIN September 25, 2019, and no protests were received.

*Healthy Families. Strong Communities.*

**RECOMMENDATION:**

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

Respectfully Submitted,

Richard Swift, Director  
Health, Housing & Human Services Department

Placed on the board agenda of \_\_\_\_\_ by the Procurement Division.



**CLACKAMAS COUNTY  
PERSONAL SERVICES CONTRACT  
County Contract # 2107 / BH Contract #9318**

This Personal Services Contract (this “Contract”) is entered into between **Folk-Time, Inc.** (“Contractor”), and Clackamas County, a political subdivision of the State of Oregon (“County”) on behalf of its Health Housing and Human Services Department, Behavioral Health Division.

**ARTICLE I.**

- 1. Effective Date and Duration.** This Contract shall become effective on **January 1, 2020** and upon signature of both parties. County and Contractor acknowledge that Work under the Contract was performed prior to the effective date. County and Contractor hereby ratify and approve Work performed prior to execution of the Contract, but not earlier than January 1, 2020. Provided, however, this ratification does not constitute a waiver of any right, title, claim, defense, or other action County may have against Contractor arising out of or related to the previously-performed Work. Unless earlier terminated or extended, this Contract shall expire on June 30, 2021. Subject to the approval of both parties, this Contract includes one (1) optional renewal term of two (2) years.
- 2. Scope of Work.** Contractor shall provide the following personal services: Adult Peer Delivered Services – Peer Support Drop-In Center and Rural Outreach (“Work”), further described in **Exhibit B**.
- 3. Consideration.** The County agrees to pay Contractor, from available and authorized funds, a sum not to exceed **three hundred thirty-three thousand eight hundred thirty dollars and forty cents (\$333,830.40)**, for accomplishing the Work required by this Contract during the initial term, which expires on June 30, 2021, and the total contract value including the two (2) year renewal term shall not exceed **seven hundred eighty-nine seven hundred forty-two dollars and forty cents (\$789,742.40)**. Consideration rates are on a fixed rate basis as specified in **Exhibit D**. If any interim payments to Contractor are made, such payments shall be made only in accordance with the schedule and requirements in **Exhibit D**.
- 4. Invoices and Payments.** Contractor shall submit monthly invoices for Work performed, as more fully described in **Exhibit D**.
- 5. Contract Documents.** This Contract consists of the following selected documents, which are attached and incorporated by reference herein:

- Contract
- Exhibit A – Definitions
- Exhibit B – Scope of Work
- Exhibit C – CMHP Service Element
- Exhibit D – Compensation
- Exhibit E – Insurance
- Exhibit F – OHP Required Federal Terms and Conditions
- Exhibit G – CMHP Required Provider Contract Provisions

- Exhibit H – Business Associate Agreement (BAA)
- Exhibit I – Qualified Service Organization Business Associate Agreement (QSOBAA)

**6. Contractor and County Contact Information**

<p>Folk-Time, Inc.                  Address: 232 SE 80<sup>th</sup> Avenue                  Portland, OR 97215                  Phone: 503-238-6428                  Email: rcseko@folktime.org</p>	<p>Clackamas County – Behavioral Health Division                  Address: 2051 Kaen Road, Suite 154                  Oregon, City, OR 97045                  Phone: 503-742-5335                  Email: BHContracts@clackamas.us</p>
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Payment information will be reported to the Internal Revenue Service (“IRS”) under the name and taxpayer ID number submitted. (See I.R.S. 1099 for additional instructions regarding taxpayer ID numbers.) Information not matching IRS records will subject Contractor payments to backup withholding.

**ARTICLE II.**

- 1. ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence, in accordance with generally accepted accounting procedures and practices, sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. County and their duly authorized representatives shall have access to the books, documents, papers, and records of Contractor, which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Contractor shall maintain such books and records for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.
- 2. AVAILABILITY OF FUTURE FUNDS.** Any continuation or extension of this Contract after the end of the fiscal period in which it is written is contingent on a new appropriation for each succeeding fiscal period sufficient to continue to make payments under this Contract, as determined by the County in its sole administrative discretion.
- 3. CAPTIONS.** The captions or headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Contract.
- 4. COMPLIANCE WITH APPLICABLE LAW.** Contractor shall comply with all applicable federal, state and local laws, regulations, executive orders, and ordinances, as such may be amended from time to time. Contractor shall further comply with any and all terms, conditions, and other obligations as may be required by applicable State and Federal agencies providing funding for performance under this Contract, whether or not specifically referenced herein.
- 5. COUNTERPARTS.** This Contract may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- 6. GOVERNING LAW.** This Contract, and all rights, obligations, and disputes arising out of it, shall be governed and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without regard to principles of conflicts of law. Any claim, action, or suit between County and Contractor that arises out of or relates to the performance of this Contract shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought in a

federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the County of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. Contractor, by execution of this Contract, hereby consents to the personal jurisdiction of the courts referenced in this section.

- 7. RESPONSIBILITY FOR DAMAGES; INDEMNITY.** Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, the conduct of Work, or from any act, omission, or neglect of Contractor, its subcontractors, agents, or employees. The Contractor agrees to indemnify, hold harmless and defend the County, and its officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees, subcontractors, or agents. However, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of County or any department of County, nor purport to act as legal representative of County or any of its departments, without first receiving from the Clackamas County Counsel's Office authority to act as legal counsel for County, nor shall Contractor settle any claim on behalf of County without the approval of the Clackamas County Counsel's Office. County may, at its election and expense, assume its own defense and settlement.

Contractor shall indemnify, hold harmless and defend the State of Oregon, and its officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees, subcontractors, or agents.

- 8. INDEPENDENT CONTRACTOR STATUS.** The service(s) to be rendered under this Contract are those of an independent contractor. Although the County reserves the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, County cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work. Contractor is not to be considered an agent or employee of County for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; and (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to County employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits.
- 9. INSURANCE.** Contractor shall secure at its own expense and keep in effect during the term of the performance under this Contract the insurance required and minimum coverage indicated in **Exhibit E**.
- 10. LIMITATION OF LIABILITIES.** This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent. Except for liability arising under or related to Article II, Section 13 or Section 21 neither party shall be liable for (i) any indirect, incidental, consequential or special damages under this Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms.

- 11. NOTICES.** Except as otherwise provided in this Contract, any required notices between the parties shall be given in writing by personal delivery, email, or mailing the same. Any communication or notice mailed shall be deemed to be given five (5) days after mailing, and immediately upon personal delivery, or within 2 hours after the email is sent during County’s normal business hours (Monday – Thursday, 7:00 a.m. to 6:00 p.m.) (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered.
- 12. OWNERSHIP OF WORK PRODUCT.** All work product of Contractor that results from this Contract (the “Work Product”) is the exclusive property of County. County and Contractor intend that such Work Product be deemed “work made for hire” of which County shall be deemed the author. If for any reason the Work Product is not deemed “work made for hire,” Contractor hereby irrevocably assigns to County all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark or trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as County may reasonably request in order to fully vest such rights in County. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications. Notwithstanding the above, County shall have no rights in any pre-existing Contractor intellectual property provided to County by Contractor in the performance of this Contract except to copy, use and re-use any such Contractor intellectual property for County use only. If this Contract is terminated prior to completion, and the County is not in default, County, in addition to any other rights provided by this Contract, may require the Contractor to transfer and deliver all partially completed Work Product, reports or documentation that the Contractor has specifically developed or specifically acquired for the performance of this Contract.
- 13. REPRESENTATIONS AND WARRANTIES.** Contractor represents and warrants to County that (A) Contractor has the power and authority to enter into and perform this Contract; (B) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (C) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work; (D) Contractor is an independent contractor as defined in ORS 670.600; and (E) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.
- 14. SURVIVAL.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Article II, Sections 1, 6, 7, 11, 13, 14, 16 and 21, and all other rights and obligations which by their context are intended to survive. However, such expiration shall not extinguish or prejudice the County’s right to enforce this Contract with respect to: (a) any breach of a Contractor warranty; or (b) any default or defect in Contractor performance that has not been cured.
- 15. SEVERABILITY.** If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.
- 16. SUBCONTRACTS AND ASSIGNMENTS.** Contractor shall not enter into any subcontracts for any of the Work required by this Contract, or assign or transfer any of its interest in this Contract by operation of law or otherwise, without obtaining prior written approval from the County, which shall be granted or denied in the County’s sole discretion. In addition to any provisions the County may

require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this Article II, Sections 1, 7, 8, 13, 16 and 27 as if the subcontractor were the Contractor. County's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.

- 17. SUCCESSORS IN INTEREST.** The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- 18. TAX COMPLIANCE CERTIFICATION.** The Contractor shall comply with all federal, state and local laws, regulation, executive orders and ordinances applicable to this Contract. Contractor represents and warrants that it has complied, and will continue to comply throughout the duration of this Contract and any extensions, with all tax laws of this state or any political subdivision of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318. Any violation of this section shall constitute a material breach of this Contract and shall entitle County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract or applicable law.
- 19. TERMINATIONS.** A) This Contract may be terminated by mutual agreement of the parties or by the County for one of the following reasons: (i) for convenience upon thirty (30) days written notice to Contractor; or (ii) at any time the County fails to receive funding, appropriations, or other expenditure authority as solely determined by the County. Upon receipt of written notice of termination from the County, Contractor shall immediately stop performance of the Work. (B) if Contractor breaches any Contract provision or is declared insolvent, County may terminate after thirty (30) days written notice with an opportunity to cure. Upon termination of this Contract, Contractor shall deliver to County all documents, information, works-in-progress and other property that are or would be deliverables had the Contract Work been completed. Upon County's request, Contractor shall surrender to anyone County designates, all documents, research, objects or other tangible things needed to complete the Work.
- 20. REMEDIES.** If terminated by the County due to a breach by the Contractor, then the County shall have any remedy available to it in law or equity. If this Contract is terminated for any other reason, Contractor's sole remedy is payment for the goods and services delivered and accepted by the County, less any setoff to which the County is entitled.
- 21. NO THIRD PARTY BENEFICIARIES.** County and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.
- 22. TIME IS OF THE ESSENCE.** Contractor agrees that time is of the essence in the performance this Contract.
- 23. FOREIGN CONTRACTOR.** If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.
- 24. FORCE MAJEURE.** Neither County nor Contractor shall be held responsible for delay or default caused by events outside the County or Contractor's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, Contractor shall make all reasonable efforts to



remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

**25. WAIVER.** The failure of County to enforce any provision of this Contract shall not constitute a waiver by County of that or any other provision.

**26. PUBLIC CONTRACTING REQUIREMENTS.** Pursuant to the public contracting requirements contained in Oregon Revised Statutes (“ORS”) Chapter 279B.220 through 279B.235, Contractor shall:

- a. Make payments promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the work provided for in the Contract.
- b. Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of the Contract.
- c. Not permit any lien or claim to be filed or prosecuted against County on account of any labor or material furnished.
- d. Pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
- e. If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a subcontractor by any person in connection with the Contract as such claim becomes due, the proper officer representing Clackamas County may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due Contractor by reason of the Contract.
- f. As applicable, the Contractor shall pay employees for work in accordance with ORS 279B.235, which is incorporated herein by this reference. The Contractor shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract, and failure to comply is a breach entitling County to terminate this Contract for cause.
- g. If the Work involves lawn and landscape maintenance, Contractor shall salvage, recycle, compost, or mulch yard waste material at an approved site, if feasible and cost effective.

**27. ABUSE REPORTING.** Contractor shall comply with all processes and procedures of child abuse (ORS 419B.005 – 419B.050), mentally ill and developmentally disabled abuse (ORS 430.731 – 430.768 and OAR 943-045-0250 through 493-045-0370) and elder abuse reporting laws (ORS 124.050 – 124.092) as if Contractor were a mandatory abuse reporter. If Contractor is not a mandatory reporter by statute, these reporting requirements shall apply during work hours only. Contractor shall immediately report to the proper State or law enforcement agency circumstances (and provide such other documentation as may be relevant) supporting reasonable cause to believe that any person has abused a child, mentally ill or developmentally disabled adult or an elderly person, or that any such person has been abused.

**28. CONFIDENTIALITY.** Contractor acknowledges that it and its employees and agents may, in the course of performing their obligations under this Contract, be exposed to or acquire information that the County desires or is required to maintain as confidential. Any and all information of any form obtained by Contractor or its employees or agents in the performance of this Contract, including but not limited to Personal Information (as “Personal Information” is defined in ORS 646A.602(11), shall be deemed to be confidential information of the County (“Confidential Information”). Any reports or other documents or items (including software) which result from the use of the Confidential Information by Contractor shall be treated with respect to confidentiality in the same manner as the Confidential Information.

Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever

(other than in the performance of this Contract), and to advise each of its employees and agents of their obligations to keep Confidential Information confidential.

Contractor agrees that, except as directed by the County, Contractor will not at any time during or after the term of this Contract, disclose, directly or indirectly, any Confidential Information to any person, and that upon termination or expiration of this Contract or the County's request, Contractor will turn over to the County all documents, papers, records and other materials in Contractor's possession which embody Confidential Information. Contractor acknowledges that breach of this Contract, including disclosure of any Confidential Information, or disclosure of other information that, at law or in good conscience or equity, ought to remain confidential, will give rise to irreparable injury to the County that cannot adequately be compensated in damages. Accordingly, the County may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of the County and are reasonable in scope and content.

Contractor agrees to comply with all reasonable requests by the County to ensure the confidentiality and nondisclosure of the Confidential Information, including if requested and without limitation: (a) obtaining nondisclosure agreements, in a form approved by the County, from each of Contractor's employees and agents who are performing services, and providing copies of such agreements to the County; and (b) performing criminal background checks on each of Contractor's employees and agents who are performing services, and providing a copy of the results to the County.

Contractor shall report, either orally or in writing, to the County any use or disclosure of Confidential Information not authorized by this Contract or in writing by the County, including any reasonable belief that an unauthorized individual has accessed Confidential Information. Contractor shall make the report to the County immediately upon discovery of the unauthorized disclosure, but in no event more than two (2) business days after Contractor reasonably believes there has been such unauthorized use or disclosure. Contractor's report shall identify: (i) the nature of the unauthorized use or disclosure, (ii) the Confidential Information used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Contractor has taken or shall take to prevent future similar unauthorized use or disclosure. Contractor shall provide such other information, including a written report, as reasonably requested by the County.

Notwithstanding any other provision in this Contract, Contractor will be responsible for all damages, fines and corrective action (including credit monitoring services) arising from disclosure of such Confidential Information caused by a breach of its data security or the confidentiality provisions hereunder.

The provisions in this Section shall operate in addition to, and not as limitation of, the confidentiality and similar requirements set forth in the rest of the Contract, as it may otherwise be amended. Contractor's obligations under this Contract shall survive the expiration or termination of the Contract, as amended, and shall be perpetual.

**29. CRIMINAL BACKGROUND CHECK REQUIREMENTS.** Contractor shall be required to have criminal background checks (and in certain instances fingerprint background checks) performed on all employees, agents, or subcontractors that perform services under this Contract. Only those employees, agents, or subcontractors that have met the acceptability standards of the County may perform services under this Contract or be given access to Personal Information, Confidential Information or access to County facilities.

**30. FURTHER ASSURANCES.** Contractor agrees to take all necessary steps, and execute and deliver any and all necessary written instruments, to perform under this Contract including, but not limited to, executing all additional documentation necessary for County to comply with applicable State or Federal funding requirements.

**31. MERGER.** THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER REFERENCED THEREIN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY ALL PARTIES. ANY SUCH AMENDMENT, CONSENT, OR WAIVER SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. CONTRACTOR, BY THE SIGNATURE HERETO OF ITS AUTHORIZED REPRESENTATIVE, IS AN INDEPENDENT CONTRACTOR, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS CONTRACT, AND CONTRACTOR AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

[Signature page follows]



**EXHIBIT A  
DEFINITIONS**

Whenever used in this Contract, the following terms shall have the meanings set forth below:

Allowable Costs: Costs described in OMB Circular A-87 except to the extent such costs are limited or excluded by other provisions of this Contract.

AMH: State of Oregon, Department of Human Services, Addictions and Mental Health Division (now known as the Department of Human Services of the State of Oregon [DHS]).

CCO: Coordinated Care Organization is an entity that has been certified as meeting the criteria adopted by the Oregon Health Authority under ORS 414.625 to be accountable for care management and to provide integrated and coordinated health care services.

Contractor: The entity contracted by the County.

County: Clackamas County Behavioral Health Division.

Covered Services: Medically appropriate services specified in OAR 410-141-3120, “Operations and Provision of Health Services” and limited in accordance with OAR 410-141-3420, “Billing and Payment” for OHP Members. The term “Covered Services” may be expanded, limited, or otherwise changed pursuant to the Clackamas County Health Share of Oregon/Clackamas Participation Agreement and OARs. Covered Services may also refer to authorized services provided to uninsured, indigent clients.

Department: DHS (formally AMH) contracts with County to establish and finance community mental health and addition programs; County, in turn, subcontracts certain services to Contractor.

DHS: the Department of Human Services of the State of Oregon (formerly known as the Addictions & Mental Health Division [AMH]).

Federal Funds: Funds paid to Contractor under this Contract that are received from an agency, instrumentality or program of the Federal government of the United States.

Health Share of Oregon: A Coordinated Care Organization (CCO) serving Oregon Health Plan enrollees of Clackamas, Multnomah, and Washington Counties.

Individual: An individual accessing publicly funded behavioral health services who is either an OHP Member or is determined eligible for services as an uninsured, indigent individual.

Medicaid: Federal funds received by OHA under the Title XIX of the Social Security Act and Children’s Health Insurance Program Funds administered jointly with Title XIX funds as part of the State medical assistance program by OHA.

Mental Health Services: Treatment services for individuals diagnosed with serious mental health illness, or other mental or emotional disturbance posing a danger to the health and safety of themselves or others.

Misexpenditure: Money, other than an overexpenditure disbursed to Contractor by County under this Contract and expended by Contractor that:

- (a) is identified by the Federal government as expended contrary to applicable statutes, rules, OMB Circulars or any other authority that governs the permissible expenditure of such money, for which the Federal government has requested reimbursement by the State of Oregon and whether in the form

**Folk-Time, Inc. – Personal Services Contract (OHP) #9318**

of a Federal determination of improper use of Federal funds, a Federal notice of disallowance, or otherwise; or

- (b) is identified by the County, State of Oregon or OHA as expended in a manner other than that permitted by this Contract, including without limitation, any money expended by Contractor, contrary to applicable statutes, rules, OMB Circulars or any other authority that governs the permissible expenditure of such money; or
- (c) is identified by the County, State of Oregon or OHA as expended on the delivery of a service that did not meet the standards and requirements of this Contract with respect to that service.

Measures and Outcomes Tracking System (MOTS): the DHS (formally AMH) data system that stores client data submitted by Contractor and/or County.

OAR: Oregon Administrative Rules duly promulgated by the Oregon Health Authority and as amended from time to time.

OHA: The State of Oregon, acting by and through its Oregon Health Authority.

OHP Member: An individual found eligible by a division of the Oregon Department of Human Services to receive services under the OHP (Oregon Health Plan) Medicaid Demonstration Project or State Children's Health Insurance Program and who is enrolled with County as Health Share of Oregon/Clackamas.

Oregon Web Infrastructure for Treatment Services (OWITS): Is 1) an optional free electronic health records system available to Counties and their Providers to submit the MOTS data, and 2) a system to manage the DSH (formally AMH) services.

Primary Source Verification: Verification from the original source of a specific credential (education, training, licensure) to determine the accuracy of the qualifications of an individual health care practitioner. Examples of primary source verification include, but are not limited to, direct correspondence, telephone verification and internet verifications.

Third Party Resources: Any individual, entity, or program that is, or may be, liable to pay all or part of the cost of any Covered Service furnished to an OHP Member, including but not limited to: private health insurance or group health plan; employment-related health insurance; medical support from absent parents; workers' compensation; Medicare; automobile liability insurance; other federal programs such as Veteran's Administration, Armed Forces Retirees and Dependent Act, Armed Forces Active Duty and Dependents Military Medical Benefits Act, and Medicare Parts A and B; another state's Title XIX, Title XXI or state-funded Medical Assistance Program; and personal estates.

Valid Claim: An invoice, in the form of a CMS 1500 claim form, submitted for payment of covered health services rendered to an eligible client that is submitted within the required 120 days from the date of service or discharge and that can be processed without obtaining additional information from the provider of the service or from a third party. A valid claim is synonymous with the federal definition of a clean claim as defined in 42 CFR 447.45(b).

**EXHIBIT B  
SCOPE OF WORK**

**Background**

As part of Clackamas County’s Behavioral Health Redesign, which began in 2009, Clackamas Behavioral Health Division committed to the development and implementation of a Peer Delivered Services System of Care for children, families, transition age youth, and adults receiving mental health and addiction services.

The term “peer” refers to a person who self-identifies as an individual who has lived experience of a mental health condition and/or an addiction and is successfully living in recovery. Peers provide support to an individual who has similar lived experiences. Peer support services are developed by peers for peers.

Family peer support refers to support activities provided by a person who has had similar lived experience raising a child who has experienced a mental health condition and/or addiction. The support services provided have been developed by family members for family members.

The supports provided are defined by the person/family asking for support. The individual/family defines their interests and goals and sets tasks to achieve those goals. The peer provides the support needed to complete those tasks and achieve the goals. Peer support services are designed to be flexible and community-based to meet the unique needs of each individual/family.

**Statement of Work**

Contractor shall:

1. Provide:
  - a. 2.6 FTE To include Peer Support Specialist, Program Assistant (also a peer), Rural Outreach Peer Support Specialist, and Cook.
  - b. Supervision of Peer Support Specialists to be provided by a qualified peer supervisor provided by Contractor.
2. Provide peer support services to the following population(s):
  - a. Adults seeking peer support services through Safe Haven peer support drop-in center.
3. Develop referral sources through outreach to appropriate system and community partners.
4. Provide various activities, workshops, and groups to individuals utilizing drop-in services.
5. Assist and support individuals in identifying community resources.
6. Provide referrals to other peer support resources as appropriate or requested by the individual.
7. Provide administrative and operational oversight of Peer Support staff that includes:
  - a. Training and continuing education
  - b. Schedule coordination
  - c. Supervision
8. Participate in appropriate system partner and/or COUNTY behavioral health division meetings.
9. Participate in COUNTY technical assistance activities to expand and strengthen the peer delivery system.
10. Perform exclusion list checks at hire and monthly of all employees, contractors, volunteers, interns, and any other persons providing, arranging, or paying for behavioral health services paid in whole or in part with Medicaid dollars, against the Office of Inspectors (OIG) General Exclusions Database and the System for Award Management (SAM) Exclusions Database. Provider will maintain monthly verification of this check.
11. Ensure that Contractor’s employees and subcontractors, if permitted, maintain active licenses/certifications via a monitoring process with the licensing board including OHA’s Traditional Health Worker Registry.

**Standards of Work**

1. Work in collaboration with the County to promote a recovery oriented support system that focuses on hope, choice, personal responsibility, and self-determination.
2. Reinforce the values and culture of peer support through education and the modeling of strong support skills.
3. Use a whole health approach, not only addressing issues of mental health and substance use, but spiritual and physical health as requested by the individual served.

**Reporting Requirements**

Contractor shall prepare and submit quarterly summary reports on Contract activities no later than thirty (30) calendar days after the end of the quarter.

<b>Reporting Schedule</b>		
	<b>Reporting Period</b>	<b>Report Due</b>
<b>1<sup>st</sup> Report</b>	January 1 – March 31	No later than April 30
<b>2<sup>nd</sup> Report</b>	April 1 – June 30	No later than July 30
<b>3<sup>rd</sup> Report</b>	July 1 – September 30	No later than October 30
<b>4<sup>th</sup> Report</b>	October 1 – December 31	No later than January 30

**County Reporting Requirements (Survey Monkey Report)**

People Served:

1. Total number of individuals served each quarter.
2. Number of referrals to other peer support services this quarter (in need of more specialized support ie: LGBTQQ, youth vs. adult support, need for CRM services vs. mental health PSS/PWS, capacity, etc.)
  - a. Why was a new peer program needed?
  - b. Where was the new referral sent?

Experience of Support Services:

1. Percentage of individuals receiving support that felt their overall wellness (whole health) was improved since working with a peer.
2. Percentage of individuals receiving support that felt their quality of life has improved since working with a peer.
3. Percentage of individuals that reported an increase in natural supports since working with a peer.
4. Percentage of individuals that report feeling accepted in their community since working with a peer.
5. Percentage of individuals that reported they would have returned to a higher level of care if not for peer support.
  - a. If an individual returned to a higher level of care, what was accessed (see Survey Monkey)

Community Supports and Workforce Development:

1. Number of support groups provided to individuals served
  - a. Number of people attending support groups
2. Number of workshops/educational opportunities for people served
  - a. Number of people attending workshops/educational opportunities
3. Number of outreach activities to potential referral sources

Number of program staff attending trainings, continuing education courses



**EXHIBIT D  
COMPENSATION**

- a. Payment for all Work performed under this Contract shall be subject to the provisions of ORS 293.462 and shall not exceed the total maximum sum of **\$789,742.40**.

Contractor shall be compensated on a fixed rate basis of **\$18,546.13** per month for the Contract's eighteen (18) month initial term. Should the renewal option be exercised, the fixed rate shall be **\$18,996.33** per month for the resulting twenty-four (24) month term.

- b. Contractor shall submit **monthly invoices by the 10<sup>th</sup> day of the month** following the month Services were provided. The invoice shall include:

BH Contract #9318,  
Month of service,  
Total amount due for all Services provided during the month, and  
Total amount billed to date by Contractor prior to the current invoice.

If Contractor fails to present invoices in proper form within sixty (60) calendar days after the end of the month in which the services were rendered, Contractor waives any rights to present such invoice thereafter and to receive payment therefor.

All invoices and supporting documentation shall be sent by email to both of the below addresses:

[BHAP@clackamas.us](mailto:BHAP@clackamas.us) and [NCaster@clackamas.us](mailto:NCaster@clackamas.us)

Alternatively, invoices and supporting documentation may be sent by mail to:

Clackamas County Behavioral Health Division  
Accounts Payable  
2051 Kaen Road, Suite #154  
Oregon City, Oregon 97045

When submitting electronically, designate Contractor name and BH Contract #9318 in the subject of the email.

- c. Payments shall be made to Contractor, within thirty (30) days, following the County's review and approval of invoices submitted by Contractor. Contractor shall not submit invoices for, and the County will not pay, any amount in excess of the maximum compensation amount set forth above. If this maximum compensation amount is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment.

**EXHIBIT E  
INSURANCE**

During the term of this Contract, Contractor shall maintain in full force at its own expense, each insurance noted below:

**1. Workers Compensation.** Contractor, its subcontractors, if any, and all employers providing work, labor, or materials under this Contract are subject employers under the Oregon Workers' Compensation Law, and shall either comply with ORS 656.017, which requires said employers to provide workers' compensation coverage that satisfies Oregon law for all their subject workers, or shall comply with the exemption set out in ORS 656.126. Contractors shall maintain employer's liability insurance with limits of \$500,000 each accident, \$500,000 disease each employee, and \$500,000 each policy limit.

**2. Professional Liability.**  **Required by County**  **Not required by County**

Professional Liability insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each claim, incident, or occurrence, with an annual aggregate limit of \$2,000,000. This is to cover damages because of personal injury, bodily injury, death, or damage to property caused by error, omission or negligent acts related to the professional services to be provided under this Contract. The policy must provide extending reporting period coverage for claims made within two years after the contract is completed.

If this box is checked Professional Liability limits shall be \$2,000,000 per occurrence and \$4,000,000 in annual aggregate.

**3. General Liability.**  **Required by County**  **Not required by County**

General Liability insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each claim, incident, or occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage for the protection of the **County and the State of Oregon, and its officers, elected officials, agents, and employees.** It shall include contractual liability coverage for the indemnity provided under this Contract.

If this box is checked General Liability limits shall be \$2,000,000 per occurrence and \$4,000,000 in annual aggregate for bodily injury/death, and \$200,000 per occurrence and \$600,000 annual aggregate for property damage.

**4. Automobile Liability.**  **Required by County**  **Not required by County**

**Commercial Automobile Liability** insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each accident for Bodily Injury, Death, and Property Damage, including coverage for owned, hired, or non-owned vehicles, as applicable.

**Commercial Automobile Liability** insurance limits shall be \$2,000,000 per occurrence and \$4,000,000 in annual aggregate for bodily injury/death, and \$200,000 per occurrence and \$600,000 annual aggregate for property damage.

**Personal Automobile Liability** insurance limits shall be not less than \$250,000/occurrence, \$500,000/aggregate, and \$100,000/property damage.

**5. Physical Abuse and Molestation Liability.**  **Required by County**  **Not required by County**

Physical Abuse and Molestation Liability insurance with a combined single limit of not less than \$1,000,000 each claim, incident, or occurrence, with an annual aggregate limit of \$2,000,000. Coverage shall be provided through either general liability or professional liability coverage. Proof of Sex Abuse/Molestation insurance coverage must be provided.

6. **Privacy and Network Security.**  **Required by County**  **Not required by County**

Privacy and Network Security coverages shall be obtained and maintained to provide protection against liability for (a) system attack; (b) denial or loss of service attacks; (c) spread of malicious software code; (d) unauthorized access and use of computer systems; and (e) liability from the loss or disclosure of confidential data with limit of \$1,000,000 per claim/annual aggregate.

If this box is checked Privacy and Network Security limit shall be at least \$4,000,000.

7. **Additional Insured Provision.** The insurance, other than Professional Liability (except to the extent it only applies to Commercial General Liability exposures), Workers' Compensation, Personal Automobile Liability and Pollution Liability Insurance, shall include **Clackamas County and the State of Oregon, and their officers, elected officials, agents, and employees** as an additional insured.

8. **Primary Coverage Clause.** Contractor's insurance shall apply as primary and will not seek contribution from any insurance or self-insurance maintained by, or provided to, the additional insureds listed above. This must be noted on the insurance certificate.

9. **Cross-Liability Clause.** A cross-liability clause or separation of insureds condition will be included in all general liability, professional liability, pollution and errors and omissions policies required by this Contract.

10. **"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 Contract, for a minimum of twenty-four (24) months following the later of: (i) the Contractor's completion and County's acceptance of all Services required under the Provider Contract; or (ii) the expiration of all warranty periods provided under the Contract. 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 County may grant approval of the maximum "tail" coverage period reasonably available in the marketplace. If County approval is granted, the Contractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.

11. **Self-insurance.** Contractor may fulfill one or more of its insurance obligation herein through a program of self-insurance, provided that Contractor's self-insurance program complies with all applicable laws, provides coverage equivalent in both type and level to that required in this Exhibit, and is reasonably acceptable to County. Contractor shall furnish an acceptable insurance certificate to County for any insurance coverage required by this Contract that is fulfilled through self-insurance. Stop-loss insurance and reinsurance coverage against catastrophic and unexpected expenses may not be self-insured.

12. **Certificates of Insurance.** Contractor shall furnish evidence of the insurance required in this Contract. Contractor will maintain the insurance in full force throughout the duration of this Contract. No Contract shall be in effect until the required certificates have been received, approved, and accepted by County. A renewal certificate will be sent to County ten (10) days prior to coverage expiration. The insurance for general liability and commercial automobile liability must include an

**Folk-Time, Inc. – Personal Services Contract (OHP) #9318**

endorsement naming **Clackamas County and the State of Oregon, and their officers, elected officials, agents, and employees** as additional insureds with respect to the Work under this Contract. If requested, complete copies of insurance policies, trust agreements, etc. shall be provided to the County. The Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions and/or self-insurance.

Certificate Holder should be:

Clackamas County, 2051 Kaen Road, Suite 154, Oregon City, Oregon 97045

Certificates of Insurance should be submitted electronically or by mail to:

[BHContracts@clackamas.us](mailto:BHContracts@clackamas.us)

Clackamas County  
Contracts Administration  
2051 Kaen Road, Suite 154  
Oregon City, OR 97045

- 13. Insurance Carrier Rating.** Coverages provided by the Contractor must be underwritten by an insurance company deemed acceptable by the County. Insurance coverage shall be provided by companies admitted to do business in Oregon or, in the alternative, rated A- or better by Best's Insurance Rating. The County reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.
- 14. Waiver of Subrogation.** Contractor agrees to waive their rights of subrogation arising from the Work performed under this Contract.
- 15. Notice of cancellation or change.** There shall be no cancellation, material change, exhaustion of aggregate limits, reduction of limits, or intent not to renew the insurance coverage(s) without thirty (30) days written notice from the Contractor or its insurer(s) to the County at the following address: Clackamas County Behavioral Health Division, 2051 Kaen Road, Suite 154, Oregon City, OR 97045 or [BHContracts@clackamas.us](mailto:BHContracts@clackamas.us).
- 16. Insurance Compliance.** The County will be entitled to enforce Contractor compliance with the insurance requirements, and will 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, terminating the Contract as permitted by the Contract, or pursuing legal action to enforce the insurance requirements. In no event shall County permit a Contractor to work under this Contract when the County is aware that the Contractor is not in compliance with the insurance requirements.

**EXHIBIT F**  
**OHP REQUIRED FEDERAL TERMS AND CONDITIONS**

Unless exempt under 45 CFR Part 87 for Faith-Based Organizations (Federal Register, July 16, 2004, Volume 69, #136), or other federal provisions, Contractor shall comply and, as indicated, cause all Subcontractors to comply with the following federal requirements to the extent that they are applicable. For purposes of this Contract, all references to federal and State laws are references to federal and State laws as they may be amended from time to time.

**1. Miscellaneous Federal Provisions**

Contractor shall comply and require all Subcontractors to comply with all federal laws, regulations and executive orders applicable to this Contract or to the delivery of Work. Without limiting the generality of the foregoing, Contractor expressly agrees to comply and require all Subcontractors to comply with the following laws, regulations and executive orders to the extent they are applicable to this Contract: (a) Title VI and VII of the Civil Rights Act of 1964, as amended, (b) 45 CFR Part 84 which implements, Title V, Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, (c) the Americans with Disabilities Act of 1990, as amended, (d) Section 1557 of the Patient Protection and Affordable Care Act (ACA), (e) Executive Order 11246, as amended, (f) the Health Insurance Portability and Accountability Act of 1996, as amended, (g) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended, (h) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, (i) the Mental Health Parity and Addiction Equity Act of 2008, as amended; (j) CMS regulations (including 42 CFR Part 438, subpart K) and guidance regarding mental health parity, including 42 CFR 438.900 et. seq.; (k) all regulations and administrative rules established pursuant to the foregoing laws, (l) all other applicable requirements of federal civil rights and rehabilitation statutes, rules and regulations, and (m) all federal laws requiring reporting of Member abuse. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to this Contract and required by law to be so incorporated. No federal funds may be used to provide Work in violation of 42 U.S.C. 14402.

**2. Equal Employment Opportunity**

If this Contract, including amendments, is for more than \$10,000, then Contractor shall comply and require all Subcontractors to comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

**3. Clean Air, Clean Water, EPA Regulations**

If this Contract, including amendments, exceeds \$100,000 then Contractor shall comply and require all Subcontractors to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 7606), the Federal Water Pollution Control Act as amended (commonly known as the Clean Water Act) (33 U.S.C. 1251 to 1387), specifically including, but not limited to Section 508 (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (2 CFR Part 1532), which prohibit the use under non-exempt federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to OHA, United States Department of Health and Human Services and the appropriate Regional Office of the Environmental Protection Agency. Contractor shall include and require all Subcontractors to include in all contracts with Subcontractors receiving more than \$100,000, language requiring the Subcontractor to comply with the federal laws identified in this section.

**4. Energy Efficiency**

Contractor shall comply and require all Subcontractors to comply with applicable mandatory standards and policies relating to energy efficiency that are contained in the Oregon energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. 6201 et seq. (Pub. L. 94-163).

**5. Truth in Lobbying**

By signing this Contract, the Contractor certifies, to the best of the Contractor's knowledge and belief that:

**a.** No federal appropriated funds have been paid or will be paid, by or on behalf of Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.

**b.** If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the Contractor shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.

**c.** The Contractor shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients and Subcontractors shall certify and disclose accordingly.

**d.** This certification is a material representation of fact upon which reliance was placed when this Contract was made or entered into. Submission of this certification is a prerequisite for making or entering into this Contract imposed by Section 1352, Title 31, of the U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**e.** No part of any federal funds paid to Contractor under this Contract shall be used other than for normal and recognized executive legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, electronic communication, radio, television, or video presentation designed to support or defeat the enactment of legislation before the United States Congress or any State or local legislature itself, or designed to support or defeat any proposed or pending regulation, administrative action, or order issued by the executive branch of any State or local government itself.

**f.** No part of any federal funds paid to Contractor under this Contract shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence the enactment of legislation, appropriations, regulation, administrative action, or executive order proposed or pending before the United States Congress or any State government, State legislature or local legislature or legislative body, other than for normal and recognized executive-legislative

relationships or participation by an agency or officer of a State, local or tribal government in policymaking and administrative processes within the executive branch of that government.

**g.** The prohibitions in subsections (e) and (f) of this section shall include any activity to advocate or promote any proposed, pending or future Federal, State or local tax increase, or any proposed, pending, or future requirement or restriction on any legal consumer product, including its sale or marketing, including but not limited to the advocacy or promotion of gun control.

**h.** No part of any federal funds paid to Contractor under this Contract may be used for any activity that promotes the legalization of any drug or other substance included in schedule I of the schedules of controlled substances established under Section 202 of the Controlled Substances Act except for normal and recognized executive congressional communications. This limitation shall not apply when there is significant medical evidence of a therapeutic advantage to the use of such drug or other substance of that federally sponsored clinical trials are being conducted to determine therapeutic advantage.

## **6. HIPAA Compliance**

The parties acknowledge and agree that each of County and the Contractor is a “covered entity” for purposes of privacy and security provisions of the Health Insurance Portability and Accountability Act and its implementing federal regulations (collectively referred to as HIPAA). County and Contractor shall comply with HIPAA to the extent that any Work or obligations of County arising under this Contract are covered by HIPAA. Contractor shall develop and implement such policies and procedures for maintaining the privacy and security of records and authorizing the use and disclosure of records required to comply with this Contract and with HIPAA. Contractor shall comply and cause all Subcontractors to comply with HIPAA and the following:

- a.** Privacy and Security of Individually Identifiable Health Information. Individually Identifiable Health Information about specific individuals is protected from unauthorized use or disclosure consistent with the requirements of HIPAA. Individually Identifiable Health Information relating to specific individuals may be exchanged between Contractor and County for purposes directly related to the provision of services to clients which are funded in whole or in part under this Contract. However, Contractor shall not use or disclose any Individually Identifiable Health Information about specific individuals in a manner that would violate HIPAA Privacy Rules in 45 CFR Parts 160 and 164, OHA Privacy Rules, OAR Chapter 407 Division 014, or OHA Notice of Privacy Practices, if done by OHA. A copy of the most recent OHA Notice of Privacy Practices is posted on the OHA web site at: <https://apps.state.or.us/cf1/FORMS/>, Form number ME2090 Notice of Privacy Practices, or may be obtained from OHA.
- b.** HIPAA Information Security. Contractor shall adopt and employ reasonable administrative and physical safeguards consistent with the Security Rules in 45 CFR Part 164 to ensure that client information shall be used by or disclosed only to the extent necessary for the permitted use or disclosure and consistent with applicable State and federal laws and the terms and conditions of this Contract. Security incidents involving client information must be immediately reported to DHS’ Privacy Officer.

- c. Data Transactions Systems. Contractor shall comply with the HIPAA standards for electronic transactions published in 45 CFR Part 162 and the DHS EDT Rules, OAR 410-001-0000 through 410-001-0200. In order for Contractor to exchange electronic data transactions with OHA in connection with claims or encounter data, eligibility or Enrollment information, authorizations or other electronic transaction, Contractor shall execute an EDT Trading Partner Agreement with OHA and shall comply with the OHA EDT Rules.
- d. Consultation and Testing. If Contractor reasonably believes that the Contractor's, County's or OHA's data transactions system or other application of HIPAA privacy or security compliance policy may result in a violation of HIPAA requirements, Contractor shall promptly consult the County or OHA HIPAA officer. Contractor, County, or OHA may initiate a request for testing of HIPAA transaction requirements, subject to available resources and OHA testing schedule.

**7. Resource Conservation and Recovery**

Contractor shall comply and require all Subcontractors to comply with all mandatory standards and policies that relate to resource conservation and recovery pursuant to the Resource Conservation and Recovery Act (codified at 42 U.S.C. 6901 et seq.). Section 6002 of that Act (codified at 42 U.S.C. 6962) requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency. Current guidelines are set forth in 40 CFR Part 247.

**8. Audits**

- a. Contractor shall comply, and require all subcontractors to comply, with applicable audit requirements and responsibilities set forth in this Contract and applicable state or federal law.
- b. If Contractor expends \$500,000 or more in Federal funds (from all sources) in its fiscal year beginning prior to December 26, 2014, Contractor shall have a single organization-wide audit conducted in accordance with the Single Audit Act. If Contractor expends \$750,000 or more in federal funds (from all sources) in a fiscal year beginning on or after December 26, 2014, Contractor shall have a single organization-wide audit conducted in accordance with the provisions of 2 CFR Subtitle B with guidance at 2 CFR Part 200. Copies of all audits must be submitted to OHA within 30 days of completion. If Contractor expends less than \$500,000 in Federal funds in a fiscal year beginning prior to December 26, 2014, or less than \$750,000 in a fiscal year beginning on or after that date, Contractor is exempt from Federal audit requirements for that year. Records must be available as provided in Exhibit B, Part 8, Section 2.

**9. Debarment and Suspension**

Contractor shall, in accordance with 42 CFR 438.808(b), not permit any person or entity to be a Subcontractor if the person or entity is listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal Procurement or Nonprocurement Programs" in accordance with Executive Orders No. 12549 and No. 12689, "Debarment and Suspension". (See 2 CFR Part 180). This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory authority other than Executive Order No.12549. Subcontractors with awards that exceed the simplified



acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.

Contractor shall ensure that no amounts are paid to a Provider that could be excluded from participation in Medicare or Medicaid for any of the following reasons:

- a. The Provider is controlled by a sanctioned individual
- b. The Provider has a contractual relationship that provides for the administration, management or provision of medical services, or the establishment of policies, or the provision of operational support for the administration, management or provision of medical services, either directly or indirectly, with an individual convicted of certain crimes as described in section 1128(b)(8)(B) of the Social Security Act
- c. The Provider employs or contracts, directly or indirectly, for the furnishing of health care, utilization review, medical social work, or administrative services, with one of the following:
  - (i) Any individual or entity excluded from participation in Federal health care programs.
  - (ii) Any entity that would provide those services through an excluded individual or entity.

The Contract prohibits the Contractor from knowingly having a person with ownership of 5% or more of the Contractor's equity if such person is (or is affiliated with a person or entity that is) debarred, suspended, or excluded from participation in federal healthcare programs.

If OHA learns that Contractor has a prohibited relationship with a person or entity that is debarred, suspended, or excluded from participation in federal healthcare programs, OHA:

- a. Must notify DHHS of Contractor's noncompliance;
- b. May continue an existing agreement with the Contractor unless DHHS directs otherwise; and
- c. May not renew or extend the existing contract with the Contractor unless DHHS provides to the State a written statement describing compelling reasons that exist for renewing or extending the Contract, consistent with 42 CFR 438.610.

**10. Pro-Children Act**

Contractor shall comply and require all Subcontractors to comply with the Pro-Children Act of 1994 (codified at 20 U.S.C. Section 6081 et seq.).

**11. Non-Discrimination**

Contractor shall comply, and require its Subcontractors to comply, with all federal and State laws and regulations including Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972 (regarding education programs and activities) the Age Discrimination Act of 1975, the Rehabilitation Act of 1973, the Americans with Disabilities Act (ADA) of 1990, and all amendments to those acts and all regulations promulgated thereunder. Contractor shall also comply with all applicable requirements of State civil rights and rehabilitation statutes and rules.

**12. OASIS**

To the extent applicable, Contractor shall comply with, and shall require Subcontractors to comply with, the Outcome and Assessment Information Set (OASIS) reporting requirements and patient notice requirements for skilled services provided by Home Health Agencies, pursuant to CMS requirements published in 42 CFR 484.45, and such subsequent regulations as CMS may issue in relation to the OASIS program.

**13. Patient Rights Condition of Participation**

To the extent applicable, Contractor shall comply with, and shall require Subcontractors to comply with, the Patient Rights Condition of Participation (COP) that Hospitals must meet to continue participation in the Medicaid program, pursuant to 42 CFR Part 482. For purposes of this Contract, Hospitals include short-term, psychiatric, rehabilitation, long-term, and children's hospitals.

**14. Federal Grant Requirements**

The federal Medicaid rules establish that OHA and the County are recipients of federal financial assistance, and therefore are subject to federal grant requirements pursuant to 42 CFR 430.2(b). To the extent applicable to Contractor or to the extent OHA and/or the County requires Contractor to supply information or comply with procedures to permit OHA and/or the County to satisfy its obligations federal grant obligations or both, Contractor must comply with the following parts of 45 CFR:

- a. Part 74, including Appendix A (uniform federal grant administration requirements);
- b. Part 92 (uniform administrative requirements for grants to state, local and tribal governments);
- c. Part 80 (nondiscrimination under Title VI of the Civil Rights Act);
- d. Part 84 (nondiscrimination on the basis of handicap);
- e. Part 91 (nondiscrimination on the basis of age);
- f. Part 95 (Medicaid and CHIP federal grant administration requirements); and
- g. Contractor shall not expend, and Contractor shall include a provision in any Subcontract that its Subcontractor shall not expend, any of the funds paid under this Contract for roads, bridges, stadiums, or any other item or service not covered under the OHP.

**15. Mental Health Parity**

Contractor shall adhere to CMS guidelines regarding Mental Health Parity detailed below:

- a. If Contractor does not include an aggregate lifetime or annual dollar limit on any medical/surgical benefits or includes an aggregate lifetime or annual dollar limit that applies to less than one-third of all medical/surgical benefits provided to enrollees, it may not impose an aggregate lifetime or annual dollar limit, respectively, on mental health or substance use disorder benefits;

- b.** If Contractor includes an aggregate lifetime or annual dollar limit on at least two-thirds of all medical/surgical benefits provided to enrollees, it must either apply the aggregate lifetime or annual dollar limit both to the medical/surgical benefits to which the limit would otherwise apply and to mental health or substance use disorder benefits in a manner that does not distinguish between the medical/surgical benefits and mental health or substance use disorder benefits; or not include an aggregate lifetime or annual dollar limit on mental health or substance use disorder benefits that is more restrictive than the aggregate lifetime or annual dollar limit, respectively, on medical/surgical benefits;
- c.** If Contractor includes an aggregate lifetime limit or annual dollar amount that applies to one-third or more but less than two-thirds of all medical/surgical benefits provided to enrollees, it must either impose no aggregate lifetime or annual dollar limit on mental health or substance use disorder benefits; or impose an aggregate lifetime or annual dollar limit on mental health or substance use disorder benefits that is no more restrictive than an average limit calculated for medical/surgical benefits in accordance with 42 CFR 438.905(e)(ii);
- d.** Contractor must not apply any financial requirement or treatment limitation to mental health or substance use disorder benefits in any classification that is more restrictive than the predominant financial requirement or treatment limitation of that type applied to substantially all medical/surgical benefits in the same classification furnished to enrollees (whether or not the benefits are furnished by Contractor).
- e.** If a member is provided mental health or substance use disorder benefits in any classification of benefits (inpatient, outpatient, emergency care, or prescription drugs), mental health or substance use disorder benefits must be provided to the member in every classification in which medical/surgical benefits are provided;
- f.** Contractor may not apply any cumulative financial requirements for mental health or substance use disorder benefits in a classification (inpatient, outpatient, emergency care, prescription drugs) that accumulates separately from any established for medical/surgical benefits in the same classification;
- g.** Contractor may not apply more stringent utilization or Prior Authorization standards to mental health or substance use disorder, than standards that are applied to medical/surgical benefits.
- h.** Contractor may not impose Non-Quantitative Treatment Limitations (NQTL) for mental health or substance use disorder benefits in any classification unless, under the policies and procedures of Contractor as written and in operation, any processes, strategies, evidentiary standards, or other factors used in applying the NQTL to mental health or substance use disorder benefits in the classification are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, or other factors used in applying the limitation for medical/surgical benefits in the classification;
- i.** Contractor shall provide all necessary documentation and reporting required by OHA to establish and demonstrate compliance with 42 CFR part 438, subpart K regarding parity in mental health and substance use disorder benefits.
- j.** Contractor shall use processes, strategies, evidentiary standards or other factors in determining access to out of network providers for mental health or substance use disorder benefits that are comparable to and applied no more stringently than, the processes, strategies, evidentiary standards or other factors in determining access to out of network providers for medical/surgical benefits in the same classification.

**EXHIBIT H  
BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement is entered into as of **January 1, 2020** (“Effective Date”) by and between **Clackamas County, a political subdivision of the State of Oregon, on behalf of its Health, Housing and Human Services, Behavioral Health Division** (“Covered Entity”) and **Folk-Time, Inc.** (“Business Associate”) in conformance with the Health Insurance Portability and Accountability Act of 1996, and its regulations (“HIPAA”).

**RECITALS**

**Whereas**, the Covered Entity has engaged the services of the Business Associate, as defined under 45 CFR §160.103, for or on behalf of the Covered Entity;

**Whereas**, the Covered Entity may wish to disclose Individually Identifiable Health Information to the Business Associate in the performance of services for or on behalf of the Covered Entity as described in a Services Agreement (“Agreement”);

**Whereas**, such information may be Protected Health Information (“PHI”) as defined by the HIPAA Rules promulgated in accordance with the Administrative Simplification provisions of HIPAA;

**Whereas**, the Parties agree to establish safeguards for the protection of such information;

**Whereas**, the Covered Entity and Business Associate desire to enter into this Business Associate Agreement to address certain requirements under the HIPAA Rules;

**Now, Therefore**, the parties hereby agree as follows:

**SECTION I – DEFINITIONS**

- 1.1 “Breach” is defined as any unauthorized acquisition, access, use or disclosure of Unsecured PHI, unless the Covered Entity demonstrates that there is a low probability that the PHI has been compromised. The definition of Breach excludes the following uses and disclosures:
  - 1.1.1 Unintentional access by a Covered Entity or Business Associate in good faith and within an Workforce member’s course and scope of employment or placement;
  - 1.1.2 Inadvertent one time disclosure between Covered Entity or Business Associate Work force members; and
  - 1.1.3 The Covered Entity or Business Associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain the information.
- 1.2 “Covered Entity” shall have the meaning given to such term under the HIPAA Rules, including, but not limited to, 45 CFR §160.103.
- 1.3 “Designated Record Set” shall have the meaning given to such term under the HIPAA Rules, including, but not limited to 45 CFR §164.501.
- 1.4 “Effective Date” shall be the Effective Date of this Business Associate Agreement.
- 1.5 "Electronic Protected Health Information" or "Electronic PHI" shall have the meaning given to such term at 45 CFR §160.103, limited to information of the Covered Entity that the Business Associate creates, receives, accesses, maintains or transmits in electronic media on behalf of the Covered Entity under the terms and conditions of this Business Associate Agreement.
- 1.6 “Health Care Operations” shall have the meaning given to such term under the HIPAA Rules, including, but not limited to, 45 CFR §164.501.
- 1.7 “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules codified at 45 CFR Part 160 and Part 164.

**Folk-Time, Inc. – Personal Services Contract (OHP) #9318**

- 1.8 “Individual” shall have the meaning given to such term in 45 CFR §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).
- 1.9 “Individually Identifiable Health Information” shall have the meaning given to such term under the HIPAA Rules, including, but not limited to 45 CFR §160.103.
- 1.10 “Protected Health Information” or “PHI” means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an Individual; the provision of health care to an Individual; or the past, present or future payment for the provision of health care to an Individual; and (ii) that identifies the Individual or with respect to which there is a reasonable basis to believe the information can be used to identify the Individual, and shall have the meaning given to such term under the HIPAA Rules, 45 CFR §160.103 and §164.501.
- 1.11 “Protected Information” shall mean PHI provided by the Covered Entity to Business Associate or created, maintained, transmitted or received by Business Associate on Covered Entity’s behalf.
- 1.12 “Required by Law” shall have the meaning given to such phrase in 45 CFR §164.103.
- 1.13 “Secretary” shall mean the Secretary of the Department of Health and Human Services or his or her designee.
- 1.14 “Security Incident” shall have the meaning given to such phrase in 45 CFR §164.304.
- 1.15 “Unsecured Protected Health Information” shall mean protected health information that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in accordance with 45 CFR §164.402.
- 1.16 Workforce means employees, volunteers, trainees, and other persons whose conduct, in the performance of work for a Covered Entity or Business Associate, is under the direct control of such Covered Entity or Business Associate, whether or not they are paid by the Covered Entity or Business Associate.

**SECTION II – OBLIGATIONS AND ACTIVITIES OF THE BUSINESS ASSOCIATE**

The Business Associate agrees to the following:

- 2.1 Not to use or further disclose PHI other than as permitted or required by this Business Associate Agreement or as Required by Law;
- 2.2 To use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to Electronic PHI, to prevent use or disclosure of PHI other than as provided for by this Business Associate Agreement;
- 2.3 To mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a use or disclosure of PHI by the Business Associate in violation of the requirements of this Business Associate Agreement;
- 2.4 To immediately report to the Covered Entity any use or disclosure of PHI not provided for by this Business Associate Agreement of which it becomes aware, including any Security Incident of which it becomes aware;
- 2.5 In accordance with 45 CFR §§164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any agent, including a subcontractor, that creates, receives, maintains, or transmits PHI on behalf of the Business Associate agrees in writing to the same restrictions, conditions and requirements that apply to the Business Associate with respect to such PHI;
- 2.6 To provide access, at the request of the Covered Entity, and in the time and manner designated by the Covered Entity, to PHI in a Designated Record Set, to the Covered Entity or, as directed by the Covered Entity, to the Individual or the Individual’s designee as necessary to meet the Covered Entity’s obligations under 45 CFR §164.524; provided, however, that this Section 2.6 is applicable

**Folk-Time, Inc. – Personal Services Contract (OHP) #9318**

- only to the extent the Designated Record Set is maintained by the Business Associate for the Covered Entity;
- 2.7 To make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR §164.526 at the request of the Covered Entity or an Individual, and in the time and manner designated by the Covered Entity; provided, however, that this Section 2.7 is applicable only to the extent the Designated Record Set is maintained by the Business Associate for the Covered Entity;
  - 2.8 To make internal practices, books and records, including policies and procedures on PHI, relating to the use and disclosure of PHI received from, or created or received by the Business Associate on behalf of, the Covered Entity available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary's determining the Covered Entity's and the Business Associate's compliance with the HIPAA Rules;
  - 2.9 To document such disclosures of PHI and information related to such disclosures as would be required for the Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528;
  - 2.10 To provide to the Covered Entity or an Individual, in a time and manner designated by the Covered Entity, information collected in accordance with Section 2.9 of this Business Associate Agreement, to permit the Covered Entity to respond to a request by an accounting of disclosures of PHI in accordance with 45 CFR §164.528;
  - 2.11 That if it creates, receives, maintains, or transmits any Electronic PHI on behalf of the Covered Entity, it will implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic PHI, and it will ensure that any agents (including subcontractors) to whom it provides such Electronic PHI agrees to implement reasonable and appropriate security measures to protect the information. The Business Associate will report to the Covered Entity any Security Incident of which it becomes aware;
  - 2.12 To retain records related to the PHI hereunder for a period of six (6) years unless the Business Associate Agreement is terminated prior thereto. In the event of termination of this Business Associate Agreement, the provisions of Section V of this Business Associate Agreement shall govern record retention, return or destruction;
  - 2.13 To promptly notify the Covered Entity of a Breach of Unsecured PHI as soon as practicable, but in no case later than 10 calendar days, after the discovery of such Breach in accordance with 45 CFR §164.410. A Breach shall be treated as discovered as of the first day on which such Breach is known, or by exercising reasonable diligence would have been known, to any person, other than the person committing the Breach, who is an employee, officer, or agent of Business Associate. The notification shall include, to the extent possible, the identification of each Individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, used, or disclosed during the Breach in addition to the information required in Section V. In addition, Business Associate shall provide the Covered Entity with any other available information that the Covered Entity is required to include in the notification to the individual under 45 CFR §164.404(c); and
  - 2.14 To the extent Business Associate is to carry out one or more of the Covered Entity's obligations under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligations.

**SECTION III – THE PARTIES AGREE TO THE FOLLOWING PERMITTED USES AND DISCLOSURES BY THE BUSINESS ASSOCIATE:**

- 3.1 Business Associate agrees to make uses and disclosures and requests for PHI consistent with the Covered Entity’s minimum necessary policies and procedures.
- 3.2 Except as otherwise limited in this Business Associate Agreement, the Business Associate may use or disclose PHI to perform functions, activities or services for, or on behalf of, the Covered Entity as specified in the Services Agreement, provided that such use or disclosure would not violate the HIPAA Rules if done by the Covered Entity; and,
- 3.3 Except as otherwise limited in this Business Associate Agreement, the Business Associate may:
  - a. **Use for management and administration.** Use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate; and,
  - b. **Disclose for management and administration.** Disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that disclosures are Required by Law, or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as Required by Law or for the purposes for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

**SECTION IV – NOTICE OF PRIVACY PRACTICES**

- 4.1 If requested, the Covered Entity shall provide the Business Associate with the notice of privacy practices that the Covered Entity produces in accordance with 45 CFR §164.520, as well as any changes to such notice. Covered Entity shall (a) provide the Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect the Business Associate’s permitted or required uses and disclosures; (b) notify the Business Associate of any restriction to the use or disclosure of PHI that the Covered Entity has agreed to in accordance with 45 CFR §164.522, to the extent that such restrictions may affect the Business Associate’s use or disclosure of PHI; and (c) not request the Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Standards if done by the Covered Entity, except as set forth in Section 3.2 above.

**SECTION V – BREACH NOTIFICATION REQUIREMENTS**

- 5.1 With respect to any Breach, the Covered Entity shall notify each individual whose Unsecured PHI has been, or is reasonably believed by the Covered Entity to have been, accessed, acquired, used, or disclosed as a result of such Breach, except when law enforcement requires a delay pursuant to 45 CFR §164.412. This notice shall be:
  - a. Without unreasonable delay and in no case later than 60 calendar days after discovery of a Breach.
  - b. In plain language including and to the extent possible:
    - 1) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;

- 2) A description of the types of Unsecured PHI that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
  - 3) Any steps Individuals should take to protect themselves from potential harm resulting from the Breach;
  - 4) A brief description of what the Covered Entity and/or Business Associate is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against any further Breaches; and,
  - 5) Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, web site, or postal address.
- c. By a method of notification that meets the requirements of 45 CFR §164.404(d).
  - d. Provided to the media when required under 45 CFR §164.406 and to the Secretary pursuant to 45 CFR §164.408.
- 5.2. Business Associate shall promptly provide any information requested by Covered Entity to provide the information described in Section 5.1.

## **SECTION VI – TERM AND TERMINATION**

- 6.1 **Term.** The term of this Business Associate Agreement shall be effective as of the date set forth above in the first paragraph and shall terminate when all of the PHI created, maintained, transmitted or received by the Business Associate on behalf of the Covered Entity, is destroyed or returned to the Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
- 6.2 **Termination for Cause.** Upon the Covered Entity’s knowledge of a material breach of this Business Associate Agreement by the Business Associate, the Covered Entity shall provide an opportunity for the Business Associate to cure the breach or end the violation. The Covered Entity shall terminate this Business Associate Agreement and the Services Agreement if the Business Associate does not cure the breach or end the violation within the time specified by the Covered Entity, or immediately terminate this Business Associate Agreement if cure is not reasonably possible.
- If the Business Associate fails to cure a breach for which cure is reasonably possible, the Covered Entity may take action to cure the breach, including but not limited to obtaining an injunction that will prevent further improper use or disclosure of PHI. Should such action be taken, the Business Associate agrees to indemnify the Covered Entity for any costs, including court costs and attorneys' fees, associated with curing the breach.
- Upon the Business Associate's knowledge of a material breach of this Business Associate Agreement by the Covered Entity, the Business Associate shall provide an opportunity for the Covered Entity to cure the breach or end the violation. The Business Associate shall terminate this Business Associate Agreement and the Services Agreement if the Covered Entity does not cure the breach or end the violation within the time specified by the Business Associate, or immediately terminate this Business Associate Agreement if the Covered Entity has breached a material term of this Business Associate Agreement if cure is not reasonably possible.
- 6.3 **Effect of Termination.**
- a. **Return or Destruction of PHI.** Except as provided in Section 6.3(b), upon termination of this Business Associate Agreement, for any reason, the Business Associate shall return, or if agreed to by the Covered Entity, destroy all PHI received from the Covered Entity, or created, maintained or received by the Business Associate on behalf of the Covered Entity and retain



no copies. This provision shall apply to PHI that is in the possession of subcontractors or agents of the Business Associate.

- b. **Return or Destruction of PHI Infeasible.** In the event that the Business Associate determines that returning or destroying PHI is infeasible, the Business Associate shall provide to the Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction of the PHI is infeasible, the Business Associate shall extend the protections of this Business Associate Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as the Business Associate maintains such PHI. In addition, the Business Associate shall continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to Electronic PHI to prevent use or disclosure of the PHI, for as long as the Business Associate retains the PHI.

## **SECTION VII – GENERAL PROVISIONS**

- 7.1 **Regulatory references.** A reference in this Business Associate Agreement to the HIPAA Rules or a section in the HIPAA Rules means that Rule or Section as in effect or as amended from time to time.
- 7.2 **Compliance with law.** In connection with its performance under this Business Associate Agreement, Business Associate shall comply with all applicable laws, including but not limited to laws protecting the privacy of personal information about Individuals.
- 7.3 **Amendment.** The Parties agree to take such action as is necessary to amend this Business Associate Agreement from time to time. All amendments must be in writing and signed by both Parties.
- 7.4 **Indemnification by Business Associate.** Business Associate agrees to indemnify, defend and hold harmless the Covered Entity and its commissioners, employees, directors, officers, subcontractors, agents or other members of its workforce, each of the foregoing hereinafter referred to as “Indemnified Party,” against all actual and direct losses suffered by the Indemnified Party and all liability to third parties arising from or in connection with Business Associate’s breach of Sections II and III of this Business Associate Agreement. Accordingly, on demand, Business Associate shall reimburse any Indemnified Party for any and all actual and direct losses, liabilities, fines, penalties, costs or expenses (including reasonable attorneys’ fees) which may for any reason be imposed upon any Indemnified Party by reason of any suit, claim, action, proceeding or demand by any third party which results for Business Associate’s breach hereunder. The obligation to indemnify any Indemnified Party shall survive the expiration or termination of this Agreement for any reason.
- 7.5 **Survival.** The respective rights and obligations of Business Associate under Section II of this Business Associate Agreement shall survive the termination of the Services Agreement and this Business Associate Agreement.
- 7.6 **Interpretation.** Any ambiguity in this Business Associate Agreement shall be resolved to permit Covered Entity to comply with the HIPAA Rules.

*[Signature Page for BAA Follows]*

**SIGNATURE PAGE FOR BUSINESS ASSOCIATE AGREEMENT**

The Parties hereto have duly executed this Agreement as of the Effective Date as defined here above.

**Business Associate**

**Covered Entity**

**FOLK-TIME, INC.**

**CLACKAMAS COUNTY**

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Authorized Signature

Date

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Richard Swift

Date

Health, Housing and Human Services

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Name / Title (Printed)