

January 25, 2018

Board of Commissioners  
Clackamas County

Members of the Board:

Approval of an Intergovernmental Agreement with  
Oregon Trail School District for Preschool Promise Services

<b>Purpose/Outcomes</b>	OTSD will provide Preschool Promise services to 18 children ages 3-5 living at or below 200 percent of the Federal Poverty Level to improve educational outcomes
<b>Dollar Amount and Fiscal Impact</b>	\$442,356 No County General Funds are involved
<b>Funding Source</b>	Oregon Department of Education Early Learning Division
<b>Duration</b>	October 1, 2017 through September 30, 2019
<b>Previous Board Action</b>	n/a
<b>Strategic Plan Alignment</b>	<ul style="list-style-type: none"> <li>• Individuals and families in need are healthy and safe</li> <li>• Ensure safe, healthy and secure communities</li> </ul>
<b>Contact Person</b>	Rodney A. Cook, 503-650-5677
<b>Contract No.</b>	8597

**BACKGROUND:**

The Children, Youth & Families Division of the Health, Housing and Human Services Department requests the approval of an Intergovernmental Agreement with Oregon Trail School District for Preschool Promise programming. Preschool Promise promotes healthy child development and early learning to underserved families to improve educational outcomes for their preschool-aged children.

This Agreement has a maximum value of \$442,356 and no County General funds are involved and no match is required. It is effective upon signature for services starting October 1, 2017 and terminating September 30, 2019. It was reviewed and approved by County Counsel on December 27, 2017.

**RECOMMENDATION:**

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

Respectfully submitted,

Richard Swift, Director  
Health, Housing & Human Services

**INTERGOVERNMENTAL AGREEMENT  
BETWEEN  
OREGON TRAIL SCHOOL DISTRICT  
AND  
CLACKAMAS COUNTY CHILDREN, YOUTH & FAMILIES DIVISION**

**Contract # 8597**

This Agreement is entered into by and between Clackamas County, acting by and through its department of Health, Housing, & Human Services, Children, Youth & Families Division (H3S-CYF), hereinafter called "COUNTY" and Oregon Trail School District (OTSD), hereinafter called "AGENCY". This Agreement is effective upon signature by all parties for services starting October 1, 2017 and terminating September 30, 2019.

**RECITALS**

WHEREAS, OTSD and H3S-CYF are units of local government, as that term is defined in ORS 190.003; and,

WHEREAS, ORS 190.010 provides that units of local government may enter into written agreements for the performance of any or all functions and activities that a party to the agreement, its officers or agencies, have authority to perform. The statute also provides that the agreement may provide for the performance of a function or activity as further set forth in the statute.

**I. PURPOSE OF INTERGOVERNMENTAL AGREEMENT (IA).**

AGENCY agrees to accomplish the following work under this contract:

Provide high-quality preschool to Clackamas County children and families living below 200% of the Federal Poverty Level and that lack access to quality preschool because of poverty, race/ethnic, language, and/or other barriers. AGENCY will provide a minimum of 900 hours of direct service classroom hours to a minimum of 18 children ages 3-5 and their families, using strength-based approaches and asset-based mindsets to facilitate and support statewide efforts to institutionalize equity as outlined in *Exhibit A-1: Statement of Program Objectives, Exhibit A-2 Monthly Program Report, Exhibit A-3 Client Feedback Survey and Report, and Exhibit A-4: Monthly Demographic Report*, attached hereto and incorporated herein.

**II. COMPENSATION AND RECORDS**

A. Compensation. COUNTY shall compensate the AGENCY for satisfactorily performing the services identified in Section I: Scope of Services. AGENCY use of funds may not exceed the amount specified in *Exhibit B: Program Budget*, attached hereto. AGENCY may not transfer funds between budget lines without the prior written approval of the COUNTY. At no time may budget modifications change the scope of this agreement.

Total maximum compensation under this agreement shall not exceed **\$442,356** broken down by fiscal year as follows:

- FY 10/1/2017 – 6/30/2018      \$201,537
- FY 7/1/2018 – 6/30/2019      \$216,320
- FY 7/1/2019 – 9/30/2019      \$ 24,499

Payment shall be made on a cost reimbursement basis and disbursements will be made monthly in accordance with the requirements outlined in *Exhibit C: Financial Report and Request for Reimbursement*, attached hereto and incorporated herein.

- B. Method of Payment. To receive payment, AGENCY shall submit monthly requests for reimbursement and required documentation as outlined in *Exhibit C: Financial Report and Request for Reimbursement*.

Withholding of Contract Payments. Notwithstanding any other payment provision of this agreement, should AGENCY fail to submit required reports when due, or submit reports which appear patently inaccurate or inadequate on their face, or fail to perform or document the performance of contracted services, COUNTY shall immediately withhold payments hereunder. Such withholding of payment for causes may continue until AGENCY submits required reports, performs required services, or establishes COUNTY's satisfaction that such failure arose out of causes beyond the control, and without the fault or negligence, of AGENCY.

- C. Record and Fiscal Control System. All payroll and financial records pertaining in whole or in part to this contract shall be clearly identified and readily accessible. Such records and documents should be retained for a period of three (3) years after receipt of final payment under this contract and all other pending matters are closed.
- D. Access to Records. COUNTY, the State of Oregon and the Federal Government, and their duly authorized representatives shall have access to the books, documents, papers, and records of AGENCY which are directly pertinent to this agreement for the purpose of making audit, examination, excerpts, and transcripts.

If an audit discloses that payments to AGENCY were in excess of the amount to which AGENCY was entitled, then AGENCY shall repay the amount of the excess to COUNTY.

### III. MANNER OF PERFORMANCE

- A. Compliance with Applicable Laws and Regulations, and Special Federal Requirements. AGENCY shall comply with all Federal and State regulations and laws, Oregon Administrative Rules, local laws and ordinances applicable to work performed under this agreement, including, but not limited to, all applicable Federal and State civil rights and rehabilitation statutes, rules and regulations, and as listed in *Exhibit D: Special and Standard Terms and Conditions*, *Exhibit E: Preschool Promise Operating Guidelines*, and *Exhibit F: Preschool Promise Program Requirements*, attached hereto and incorporated herein. AGENCY must, throughout the duration of this agreement and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this agreement. Further, any violation of AGENCY'S warranty, in this contract that AGENCY has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this agreement. Any violation shall entitle COUNTY to terminate this agreement, to pursue and recover any and all damages that arise from the breach and the termination of this agreement, and to pursue any or all of the remedies available under this agreement, at law, or in equity, including but not limited to:

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

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

- B. Background Checks. Criminal Background checks are required for direct service staff funded through this contract.
- C. Mandatory Reporting. Mandatory reporting is required for direct service staff funded through this contract.
- D. Precedence. When a requirement is listed both in the main boilerplate of the contract and in an Exhibit, the Exhibit shall take precedence.
- E. Subcontracts. AGENCY shall not enter into any subcontracts for any of the work scheduled under this contract without obtaining prior written approval from COUNTY.
- F. Independent Contractor. AGENCY certifies that it is an independent contractor and not an employee or agent of Clackamas County, State or Oregon or Federal government. AGENCY is not an officer, employee or agent of Clackamas County as those terms are used in ORS 30.265. Responsibility for all taxes, assessments, and any other charges imposed upon employers shall be the sole responsibility of AGENCY.
- G. Tax Laws. AGENCY represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Contract, has faithfully complied with:
  - 1. All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;
  - 2. Any tax provisions imposed by a political subdivision of this state that applied to AGENCY, to AGENCY'S property, operations, receipts, or income, or to AGENCY'S performance of or compensation for any work performed by AGENCY;
  - 3. Any tax provisions imposed by a political subdivision of this state that applied to AGENCY, or to goods, services, or property, whether tangible or intangible, provided by AGENCY; and
  - 4. Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

#### IV. GENERAL CONDITIONS

- A. Indemnification. AGENCY agrees to indemnify, save, hold harmless, and defend COUNTY and its officers, elected officials, commissioners, agents, and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of actions, suits, claims or demands attributable in whole or in part to the acts or omissions of AGENCY, and AGENCY's officers, agents and employees, in performance of this contract.

If AGENCY is a public body, AGENCY's liability under this contract is subject to the limitations of the Oregon Tort Claims Act.

- B. Insurance.

- 1. Commercial General Liability Insurance

Required by COUNTY       Not required by COUNTY

AGENCY shall obtain, at AGENCY's expense, and keep in effect during the term of this contract, Commercial General Liability Insurance covering bodily injury and property damage on an "occurrence" form in the amount of not less than \$1,000,000 per occurrence/\$3,000,000 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 contract. This policy(s) shall be primary insurance as respects to the COUNTY. Any insurance or self-insurance maintained by COUNTY shall be excess and shall not contribute to it.

2. Commercial Automobile Insurance

Required by COUNTY       Not required by COUNTY

AGENCY shall also obtain, at AGENCY's expense, and keep in effect during the term of the contract, "Symbol 1" 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 \$3,000,000.

3. Professional Liability Insurance

Required by COUNTY       Not required by COUNTY

AGENCY agrees to furnish COUNTY evidence of Professional Liability Insurance in the amount of not less than \$1,000,000 combined single limit per occurrence/ \$3,000,000 general annual aggregate for malpractice or errors and omissions coverage 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 contract. COUNTY, at its option, may require a complete copy of the above policy.

4. Physical Abuse and Molestation Insurance Coverage. Abuse and molestation Insurance in a form and with coverage that are satisfactory to the Agency 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 Grantee is responsible including but not limited to grantee and Grantee's employees and volunteers. Policy endorsement's definition of an insured shall include the Grantee, and the Grantee'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. Coverage can be provided by a separate policy or as an endorsement to the commercial general liability or professional liability policies. The 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 individual, and irrespective of the number of incidents or injuries or the time period or are 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.
5. Excess/Umbrella Insurance. A combination of primary and excess/umbrella insurance may be used to meet the required limits of insurance.
6. 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.
7. Tail Coverage. If liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of this contract for a duration of thirty-six (36) months or the maximum time period the AGENCY's insurer will provide "tail" coverage as subscribed, or continuous "claims made" liability coverage for thirty-six (36) months following the contract completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided its retroactive date is on or before the effective date of this contract.

8. Additional Insured Provisions. The insurance, other than Professional Liability, Workers' Compensation, and Personal Automobile Liability insurance, shall include "Clackamas County, its agents, officers, elected officials, and employees" as an additional insured, as well as the "State of Oregon, its officers, employees and agents", but only with respect to AGENCY's activities under this agreement.
  9. 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 COUNTY. Any failure to comply with this provision will not affect the insurance coverage provided to COUNTY. The 30 days' notice of cancellation provision shall be physically endorsed on to the policy.
  10. Insurance Carrier Rating. Coverages provided by AGENCY 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.
  11. Certificates of Insurance. As evidence of the insurance coverage required by this contract, AGENCY shall furnish a Certificate of Insurance to county. 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 10 days prior to coverage expiration. The certificate(s) shall list the State of Oregon, its officers, employees and agents as a Certificate holder and as an endorsed Additional Insured. If excess/umbrella insurance is used to meet the minimum insurance requirement, the Certificate of Insurance must include a list of all policies that fall under the excess/umbrella insurance.
  12. Primary Coverage Clarification. AGENCY's 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.
  13. Cross-Liability Clause. A cross-liability clause or separation of insureds condition will be included in all general liability, professional liability, and errors and omissions policies required by this contract.
  14. Waiver of Subrogation. AGENCY agrees to waive their rights of subrogation arising from the work performed under this agreement.
- C. Governing Law; Consent to Jurisdiction. This agreement shall be governed by and construed in accordance with the laws of the State of Oregon. Any claim, action, or suit between COUNTY and AGENCY that arises out of or relates to performance under this agreement shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, State of Oregon. Provided, however, that if any such claim, action or suit may be brought only in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. AGENCY by execution of this agreement consents to the in personam jurisdiction of said courts.
- D. Amendments. The terms of this contract shall not be waived, altered, modified, supplemented or amended, in any manner whatsoever, except by written instrument signed by AGENCY and COUNTY.
- E. Severability. If any term or provision of this agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the agreement did not contain the particular term or provision held to be invalid.

- F. Waiver. The failure of either party to enforce any provision of this agreement shall not constitute a waiver of that or any other provision.
- G. 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.
- H. Oregon Constitutional Limitations. 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 provision herein, which would conflict with such law, is deemed inoperative to that extent.
- I. Oregon Public Contracting Requirements. Pursuant to the requirements of ORS 279B.020 and ORS 279B.220 through 279B.235 the following terms and conditions are made a part of this contract:
  - 1. AGENCY shall:
    - a. make payments promptly, as due, to all persons supplying to AGENCY labor or materials for the prosecution of the work provided for in this contract.
    - b. pay all contributions or amounts due the Industrial Accident Fund from such agency or subcontractor incurred in performance of this 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 to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
  - 2. If AGENCY fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to AGENCY or a subcontractor by any person in connection with this contract as such claim becomes due, the proper officer representing 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 AGENCY by reason of this contract.
  - 3. No person shall be employed for more than ten (10) hours in any one day, or more than forty (40) hours in any one week, except in cases of necessity, emergency or where the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services as defined in ORS 279A.055, the employee shall be paid at least time and one-half pay:
    - a. for all overtime in excess of eight (8) hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday;
    - b. for all overtime in excess of 10 hours in any one day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and
    - c. for all work performed on Saturday and on any legal holiday specified in ORS 279B.020.
  - 4. AGENCY shall pay employees at least time and a half for all overtime work performed under this agreement in excess of 40 hours in any one week, except for individuals under person services contracts who are excluded under ORS 653.010 to 653.261 and the Fair Labor Standards Act of 1938 (29 U.S.C. 201 to 209) from receiving overtime.
  - 5. As required by ORS 279B.230, AGENCY shall promptly, as due, make payment to any person, co-partnership, association, or corporation furnishing medical, surgical, and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of

AGENCY, of all sums that AGENCY agrees to pay for the services and all moneys and sums that AGENCY collected or deducted from the wages of its employees under any law, contract or agreement for the purpose of providing or paying for the services.

6. **Workers' Compensation.** All subject employers working under this agreement must either maintain workers' compensation insurance as required by ORS 656.017, or qualify for an exemption under ORS 656.126. AGENCY shall maintain employer's liability insurance with limits of \$500,000 each accident, \$500,000 disease each employee, and \$500,000 each policy limit.
- J. **Ownership of Work Product.** All work products of the AGENCY which result from this contract are the exclusive property of COUNTY.
- K. **Integration.** This contract contains the entire agreement between COUNTY and AGENCY and supersedes all prior written or oral discussions or agreements.
- L. **Successors in Interest.** The provisions of this contract shall not be binding upon or inure to the benefit of AGENCY's successors in interest without COUNTY's explicit written consent.

#### V. TERMINATION

- A. **Termination Without Cause.** This agreement may be terminated by mutual consent of both parties, or by either party upon thirty (30) business days' notice, in writing and delivered by certified mail or in person.
- B. **Termination With Cause.** COUNTY, by written notice of default (including breach of contract) to AGENCY, may terminate this agreement effective upon delivery of written notice to AGENCY, or at such later date as may be established by COUNTY, under any of the following conditions:
  1. If COUNTY funding from Federal, State, or other sources is not obtained and continued at levels sufficient to allow for purchase of the indicated quantity of services, the contract may be modified to accommodate a reduction in funds.
  2. If Federal or State regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this contract or are no longer eligible for the funding authorized by this agreement.
  3. If any license or certificate required by law or regulation to be held by AGENCY to provide the services required by this agreement is for any reason denied, revoked, or not renewed.
  4. If AGENCY fails to provide services, outcomes, reports as specified by COUNTY in this agreement.
  5. If AGENCY fails to perform any of the other provisions of this contract, or so fails to pursue the work as to endanger performance of this contract in accordance with its terms, and after receipt of written notice from COUNTY, fails to correct such failures within 10 days or such longer period as COUNTY may authorize.



This Agreement consists of five (5) sections plus the following attachments which by this reference are incorporated herein:

- Exhibit A-1: Statement of Program Objectives
- Exhibit A-2: Monthly Program Report
- Exhibit A-3: Client Feedback Survey and Report
- Exhibit A-4: Monthly Demographic Report
- Exhibit B: Program Budget
- Exhibit C: Financial Report and Request for Reimbursement
- Exhibit D: Special and Standard Terms and Conditions
- Exhibit E: Preschool Promise Operating Guidelines
- Exhibit F: Preschool Promise Program Requirements

**AGENCY**

Oregon Trail School District  
36525 Industrial Way  
Sandy, OR 97055

By:   
Timothy Belanger, Business Director

Date: 1-5-2018

DUNS: 034295998

EIN: 93-6000232

**CLACKAMAS COUNTY**

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  
Health, Housing and Human Services

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

 for RC  
Rodney A. Cook, Director  
Children, Youth & Families Division

Date: 1/6/2018