

September 20, 2018

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Service Agreement with Genoa (Beavercreek) partnering
with Clackamas County Health Centers Division
in participation with 340B Pharmacy Services Agreement

Purpose/Outcomes	The intent of the Service Agreement is to facilitate Clackamas County Health Centers Division (CCHCD) participation in the 340B drug program.
Dollar Amount and Fiscal Impact	The Agreement has no maximum value as it will generate revenue for Clackamas County's Federally Qualified Health Center (FQHC). This will enter CCHCD and Genoa into a "ship to/bill to" arrangement wherein Genoa will dispense prescription drugs on behalf of CCHCD and then charge and collect fees for such drugs.
Funding Source	No County General Funds are involved. This is revenue generating through the 340B Drug Program.
Duration	Effective upon signature and terminates with the Third Party Drug Administrator Agreement (RxStrategies, 6/30/23).
Strategic Plan Alignment	1. Provide patient-centered health center services to vulnerable populations so they can experience improved health. 2. Ensure safe, health and secure communities
Previous Board Action	There has been no previous board action on this item.
Contact Person	Deborah Cockrell, FQHC Director – 503-742-5495
Contract No.	9002

BACKGROUND:

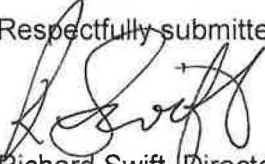
The Clackamas County Health Centers Division (CCHCD) requests the approval of a Service Agreement for the transition of the Third Party Administrator (TPA) of the 340B Program managed by CCHCD. The incumbent is NEC Networks, and it will be replaced with RxStrategies. The TPA manages the prescription drug virtual inventory of various pharmacies utilized by CCHCD. This agreement reflects the TPA change for the Genoa Beavercreek pharmacy location. Participation in the 340B Drug Program allows the purchase of prescription drugs for CCHCD patients at favorable discounts from drug manufacturers. Selection of RxStrategies replacing NEC Networks was done through a competitive RFP that was awarded on January 11, 2018. County Counsel reviewed and approved this agreement on August 30, 2018.

This Agreement is effective upon signature and continues through June 30, 2023,
(termination of the Third Party Administrator Agreement, RxStrategies).

RECOMMENDATION:

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

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. Swift", written over the printed name.

Richard Swift, Director
Health, Housing, and Human Services

PHARMACY SERVICE AGREEMENT

#9002

THIS AGREEMENT is made this ____ day of _____, 201__, by and between *County of Clackamas*, a Oregon City nonprofit corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code, (hereinafter "(Qualified Entity)" or "County of Clackamas") and, Genoa Healthcare, LLC., with licensed pharmacies located at the locations shown in Exhibit B. (hereinafter "Pharmacies").

WHEREAS, County of Clackamas is a "Covered Entity" as defined in Section 340B of the Public Health Service Act (hereinafter "Section 340B") and is eligible to purchase certain outpatient drugs at reduced prices for use by Eligible Patients, as defined in this Agreement, from drug manufacturers who have signed a drug purchasing agreement with the United States Department of Health and Human Services (hereinafter "DHHS") and/or the manufacturers' wholesalers;

WHEREAS, County of Clackamas provides health care services to Eligible Patients at the sites listed in Exhibit A (the "QE Site");

WHEREAS, County of Clackamas has engaged RxStrategies, Inc. ("RXS") to manage the pharmacy services and pharmacy relationship of County of Clackamas,

WHEREAS, the system, procedures and processes of RXS (past, current and future) remain the sole property of RXS and cannot be used by the County of Clackamas and/or the Pharmacy independent of this agreement in perpetuity without the written consent of RXS,

WHEREAS, Pharmacy is duly licensed as a pharmacy in the State of *Oregon* and

WHEREAS, County of Clackamas desires to engage Pharmacy to provide Pharmacy Services, as defined in this Agreement, to Eligible Patients on behalf of Qualified Entity with respect to outpatient drugs purchased pursuant to Section 340B.

NOW, THEREFORE, the parties agree as follows:

- 1) **Eligible Patients.** An individual will be considered an Eligible Patient under this Agreement if the following conditions are met:
 - a) County of Clackamas has established a relationship with the individual, such that County of Clackamas maintains records of the individual's health care;
 - b) The individual receives health care services from a health care professional who is either employed by County of Clackamas or under contract with County of Clackamas such that responsibility for the care remains with QE;
 - c) The individual receives a health care service or range of services from County of Clackamas which is consistent with the service or range of services for which grant funding, listed in Section 340B, or Federally qualified health County of Clackamas look-alike status has been granted County of Clackamas; and
 - d) The individual receives health care services at the County of Clackamas Site.
 - i) An individual will not be considered an Eligible Patient if the only health care service provided by County of Clackamas to the individual is the dispensing of a drug or drugs for subsequent self-

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administration or administration in the home setting. Notwithstanding the foregoing, individuals registered in a State operated or funded AIDS drug purchasing assistance program receiving financial assistance under Title XXVI of the Public Health Services Act are considered Eligible Patients.

- e) The patient is not eligible for the 340B program if the individual is part of a fee for service Medicaid program provided by the State; or, any other program the is deemed ineligible for the 340B program as specified by law, statute or administrative ruling.
- 2) **Covered Drugs.** The prescription outpatient drugs covered by this Agreement (hereinafter "Covered Drugs") are listed on Attachment A of this Agreement. The parties agree that County of Clackamas may add or remove Covered Drugs from Attachment A at its sole discretion during the life of this Agreement. Drug substitution may only be made in compliance with an approved substitution notice from the manufacturer.
- 3) **Purchases, Shipment and Pricing of Drugs.**
- a) Pharmacy shall maintain sufficient supplies of such drugs to meet the day-to-day needs of Eligible Patients. County of Clackamas will replenish Pharmacy's inventory for Covered Drugs dispensed to Eligible Patients for which payment under this Agreement was received by Pharmacy. County of Clackamas reserves the right to make appropriate substitutions of drugs as required by the manufacturer. County of Clackamas shall arrange to be billed directly for Covered Drugs by the manufacturer/wholesaler(s), and arrange for shipment of such drugs directly to the Pharmacy or the designated warehouse of the Pharmacy as requested by the pharmacy. Replenished drugs that are in "overstock" status remain the property of the QE. County of Clackamas, through RXS, shall establish all retail prices for Covered Drugs for all Eligible Patients as provided in Attachment A, which may be amended from time to time by County of Clackamas.
 - b) In order to facilitate the timeliness of the inventory replenishment process and ensure that drug replenishment is consistent with current and historical practices of the Pharmacy, Pharmacy shall provide, if requested by RXS, the following documentation and information to RXS upon execution of this Agreement:
 - i) Identification of all pharmaceutical wholesalers;
 - ii) Velocity reports for the most recent past three-month period from all wholesalers;
 - iii) List of inventory items by NDC with Usual and Customary prices;
 - iv) List of Pharmacy's third party payer agreements with provider numbers and evidence of Medicaid and Medicare participation;
 - v) A description of the Pharmacy's computer and communication equipment, including computers, printers, fax machines, number of telephone lines, Internet connectivity, e-mail pharmacy software version and release, and how drug database updates are handled and by whom; and
 - vi) Such other documentation and information as reasonably requested by RXS in support of the 340B program addressed in this agreement.
 - c) If at the end of any 120-day period after a drug has been dispensed, the QE is unable to replenish the dispensed drug to the Pharmacy, the QE will reimburse the Pharmacy for the cost of the drug dispensed at the documented cost of the drug to the Pharmacy. If the Pharmacy cannot produce

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appropriate documentation (e.g., invoice from wholesaler or manufacturer) for the cost of the drug, then the QE will reimburse the Pharmacy at the prevailing 340B price.

- d) At the termination of the Agreement, the contract pharmacy must attest to the QE that all 340B drugs in inventory in excess of requirement ("Overstock") have been destroyed and therefore cannot be used in general commerce. Written notification of the destruction will be provided to the QE.
- 4) **Tracking System.** The parties to this Agreement understand that, pursuant to Section 340B, County of Clackamas is liable to the manufacturer of Covered Drugs in an amount equal to the reduction in the price of Covered Drugs in the event that a discounted Covered Drug is sold or otherwise transferred to a person who is not an Eligible Patient. County of Clackamas shall establish and maintain a tracking system suitable to prevent the diversion of Covered Drugs to individuals who are not Eligible Patients. County of Clackamas will establish a process for periodic random (sample) comparison of its prescribing records with Pharmacy's dispensing records to detect potential irregularities. Said comparison will be conducted quarterly and comparison of purchasing and dispensing records will be performed every six months.
 - a) Pharmacy agrees to use the provider identified by RXS for pre-adjudication of all claims. Pharmacy agrees to make any and all adjustments to purchasing and dispensing records that County of Clackamas advises are reasonably necessary to prevent diversion of Covered Drugs to individuals who are not Eligible Patients.
- 5) **Prescriptions.** Pharmacy shall dispense Covered Drugs only in the following circumstances:
 - a) Upon presentation of a prescription form bearing an eligible prescriber's name, the Eligible Patient's name, or
 - b) Upon receipt of a prescription ordered during normal business hours of the QE by telephone, facsimile or electronic transmission on behalf of an Eligible Patient by a legally qualified health care provider.
 - c) County of Clackamas will furnish lists to Pharmacy of all Eligible Patients and eligible prescribers and will update the lists to reflect any changes.
- 6) **Pharmacy Services.** Pharmacy shall provide the following services (with assistance from RXS where necessary or requested):
 - a) Dispensing Covered Drugs to Eligible Patients in accordance with all applicable State and Federal statutes and regulations and the professional judgment of the dispensing pharmacist;
 - b) Participating in all pre- and post-adjudication programs as directed by County of Clackamas or RXS as well as all data collection or auditing programs, plans and procedures as may be of assistance to County of Clackamas or RXS in order to establish or verify costs, charges, reimbursement rates, billing, payments or receipts;
 - c) Participating in third party payer arrangements in which the QE participates or which the QE may request. Pharmacy shall make all best efforts to enter into all such third party payer arrangements prior to the Commencement Date;
 - d) Maintaining all records and reports (including without limitation, prescription files, velocity reports and records of ordering and receipt) required under this Agreement, Section 340B, and by any applicable Federal and State law and regulations, which shall be separate from Pharmacy's own operations and records, and shall be accessible to County of Clackamas, DHHS and the manufacturer/wholesaler in the case of audit. Such records shall be retained for not less than five

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years after the Pharmacy Services are rendered, and shall be available for inspection or audit by County of Clackamas and as otherwise permitted by law and this Agreement;

- e) No drug substitutions other than those directed by the manufacturer will be made without the consent of the QE;
 - f) Conducting Eligible Patient drug utilization review;
 - g) Conducting formulary maintenance, including providing drug-related information services to County of Clackamas clinical personnel, consulting with County of Clackamas on the purchase of Covered Drugs, and identifying and disposing of Covered Drugs in its inventory which are out of date;
 - h) Maintaining Eligible Patient drug profiles;
 - i) Counseling and advising Eligible Patients consistent with the rules, limitations, and privileges incident to the pharmacy-patient relationship; and
 - j) Determining if a particular Eligible Patient is covered by a governmental or private insurance program, and if covered, will obtain the necessary authorization(s) or benefit payment for Covered Drugs.
- 7) **Relationship of the Parties.** Pharmacy is an independent contractor and shall be solely responsible for its acts and omissions regarding advice and services it is required to provide to Eligible Patients and County of Clackamas. Pharmacy agrees to render all services provided under this Agreement in accordance with professional standards applicable to pharmacy services and in accordance with rules and regulations of the State Board of Pharmacy. Pharmacy shall have the right to refuse to serve any Eligible Patient where such service would violate any statute, regulations, or professional standards applicable to pharmacy services. Pharmacy shall notify County of Clackamas of any refusal of service within twenty-four (24) hours of such refusal.
- i) Pharmacy understands and acknowledges that RXS has been engaged by County of Clackamas to manage pharmacy services and the relationship with Pharmacy. Accordingly, Pharmacy acknowledges that RXS is and will act as agent for County of Clackamas. All obligations, duties, functions or tasks of County of Clackamas as described herein may be carried out by RXS, as agent for County of Clackamas. Unless advised to the contrary, Pharmacy shall provide all reports required hereunder to RXS, as agent for County of Clackamas, and shall seek assistance from RXS, not County of Clackamas, for all problems and issues regarding the services, duties and obligations hereunder.
- 8) **Pharmacy Site.** Pharmacy agrees it will provide Pharmacy Services contracted for under this Agreement at the sites listed in Exhibit B.
- 9) **Payment for Services.** Pharmacy shall be paid for Pharmacy Services in accordance with the terms provided on Attachment B to this Agreement. County of Clackamas and Pharmacy have freely negotiated the terms of this Agreement and neither has offered or received any inducement or other consideration from the other party for entering into this Agreement. The compensation to be paid to Pharmacy is consistent with fair market value in arms-length transactions for Pharmacy Services and is not determined in a manner that takes into account the volume or value of any referrals or business otherwise generated between the parties for which payment may be made in whole or in part under a Federal or State health care program. Nothing in this Agreement shall be construed to require County of Clackamas to make referrals of patients to Pharmacy.
- 10) **Patient Choice.** Pharmacy understands and agrees that Eligible Patients of County of Clackamas may elect not to use Pharmacy for Pharmacy Services. In the event that an Eligible Patient elects not to use

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Pharmacy for such services, the patient may obtain the prescription from the prescriber and then obtain the drug(s) from the pharmacy provider of his or her choice.

11) **Quarterly Reports and Financial/Operational Reviews.**

- a) RXS with the assistance of the Pharmacies shall provide County of Clackamas with quarterly financial statements, a detailed status report of collections, and a summary of receiving and dispensing records in a form satisfactory to County of Clackamas. The provisions of this Section 11 shall survive the expiration or termination of this Agreement for any reason.
- b) RXS, County of Clackamas and Pharmacy will review the financial and operational performance of the 340B program via on-site or web based meetings on the following schedule:
 - i) After the first 90 days of operation
 - ii) Annually on or near the anniversary of the commencement of operations
- c) Topics of discussion and review in the financial/operational review will include; but, not be limited to: review of dispensing fees; total prescription volume processed in the program; brand and generic mix of prescriptions processed; inventory management and replenishment; financial viability of the program; and, any other topics the parties agree upon.

12) **Prohibition on Resale or Transfer.** Pharmacy agrees that it will not resell or transfer a Covered Drug ordered under this Agreement pursuant to Section 340B to an individual who is not an Eligible Patient of County of Clackamas. Pharmacy further agrees that, in the event of transfer, diversion, or resale of a Covered Drug in violation of this Agreement, it will pay County of Clackamas an amount equal to the price discount County of Clackamas received from the manufacturer/wholesaler so that the QE can reimburse the manufacturer/wholesaler as provided in Section 4. For purposes of this provision, the QE's determination of the amount of the discount on a Covered Drug payable to the manufacturer shall be conclusive.

- a) County of Clackamas agrees that it will not resell or transfer a Covered Drug to an individual who is not an Eligible Patient.

13) **Audits.**

- a) Pharmacy understands and agrees that both Pharmacy and County of Clackamas are subject to audit by DHHS and by drug manufacturers who have signed a drug purchasing agreement with DHHS, which audits may pertain to the QE's compliance with the prohibition on drug resale or transfer and the prohibition on duplicate Medicaid rebates and discounts. Pharmacy further understands that the DHHS has published proposed guidelines for such audits, a copy of which is attached hereto as Attachment C. Pharmacy agrees to cooperate with such audits and to comply with applicable provisions of the audit guidelines and amendments thereto that may be published from time to time.
- b) Pharmacy grants RXS the right, on behalf of the QE to audit its books and records (including all electronic records) using any reasonable means to verify and ensure compliance with the duties, obligations and transactions outlined hereunder. Pharmacy agrees to use its best efforts to cooperate with such audits in good faith.
- c) The provisions of this Section 13 shall survive the expiration or termination of this Agreement for any reason.
- d) Copies of this agreement may be provided to the Office of Pharmacy Affairs upon request.

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- 14) **Inspection by Manufacturer.** Pharmacy and County of Clackamas understand and agree that a copy of this Pharmacy Services Agreement will be provided, upon request, to a drug manufacturer who has signed a purchasing agreement with DHHS and sells Covered Drugs to County of Clackamas. In the event either party receives such a request, it shall immediately inform the other party and each party shall then have the opportunity to delete any information in this Agreement and attachments which it considers to be proprietary and confidential prior to submitting the Agreement to the requesting manufacturer. The provisions of this Section 14 shall survive the expiration or termination of this Agreement for any reason.
- 15) **Insurance.** Pharmacy shall maintain during the term of this Agreement a policy of liability insurance with a responsible insurance carrier in an amount not less than \$100,000 per incident and which includes the Covered Drugs in its coverage.
- 16) **Indemnification.** Pharmacy agrees to indemnify and hold County of Clackamas and RXS harmless from any loss, damage or cost (including reasonable attorney fees) it may incur as a result of any wrongful acts or omission of Pharmacy with respect to this Agreement. County of Clackamas agrees to indemnify and hold Pharmacy harmless from any loss, damage or cost (including reasonable attorney fees) it may incur as a result of any wrongful acts or omissions of County of Clackamas with respect to this Agreement.
- 17) **Non-Assignment.** This Agreement may not be assigned by either party without the prior written agreement of the other party and RXS.
- 18) **Term and Termination.**
- a) This Agreement shall commence on _____, 201__ (the "Commencement Date"), and shall continue in effect for 3 years from the Commencement Date. Thereafter, this Agreement shall automatically renew for consecutive one (1) year periods until terminated as provided below.
 - b) This Agreement may be terminated by either party as follows for any one of the provisions listed:
 - i) Mutual agreement of the parties.
 - ii) Sixty (60) days prior written notice by either party without cause.
 - iii) Termination or expiration of the QE and RxStrategies agreement.
 - iv) County of Clackamas, immediately and without prior notice, upon a material breach of this Agreement by Pharmacy. Without limiting County of Clackamas's right to assert any other act or failure to act as constituting a material breach by Pharmacy, Pharmacy's dispensing of a Covered Drug to an individual who is not an Eligible Patient or any other diversion of a Covered Drug shall be deemed to be a material breach. County of Clackamas's waiver or failure to take action with respect to Pharmacy's failure to comply with any term or provision of this Agreement shall not be deemed to be a waiver of County of Clackamas's right to insist on future compliance with such term or provision.
 - c) Any notice required to be given pursuant to the terms and provisions of this Agreement shall be in writing and shall be sent by certified or registered mail, return receipt requested, to the parties at the addresses set forth on the signature pages hereto. Notice shall be effective on the day it is mailed.
 - d) Upon the request of County of Clackamas, Pharmacy agrees to continue to provide Pharmacy Services for a period of up to sixty (60) days after the date this Agreement expires or is terminated in order to ensure an effective transition of services and continuation of quality care for Eligible Patients.

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- 19) **Compliance with Laws.** The parties hereto shall comply with all applicable federal, state and local laws, rules, regulations and requirements. County of Clackamas shall comply with all rules and regulations governing its Health Resources and Service Administration grant funding.
- 20) **Choice of Law.** This Agreement shall be interpreted according to the laws of the State of Oregon.
- 21) **Representations of Pharmacy.** Pharmacy represents that:
- a) it employs, and will continue to employ throughout the term of this Agreement, sufficient qualified and credentialed personnel needed to manage and operate the Pharmacy and provide the services anticipated hereunder in a timely, professional, competent and ethical manner;
 - b) it owns, possesses and employs, and will continue to employ throughout the term of this Agreement, sufficient technology and equipment as needed to manage and operate the Pharmacy and provide the services in the manner anticipated hereunder;
 - c) it will render the services hereunder in accordance with prevailing pharmaceutical and medical standards that are applied the same fashion to all patients of County of Clackamas;
 - d) it will render all services to Eligible Patients without regard to race, creed, color, age, sex, sexual orientation, citizenship, marital status, veteran status, national origin, disability, religion, arrest record or other protected status;
 - e) it will not use drugs purchased under Section 340B to dispense Medicaid prescriptions, except as provided in an arrangement with the State Medicaid agency as approved by County of Clackamas to prevent duplicate discounting;
 - f) all of its employees, agents, representatives and members of its workforce, whose services may be used to fulfill obligations under this Agreement are or shall be appropriately informed of the terms of this Agreement and are under legal obligation to Pharmacy, by contract or otherwise, sufficient to enable Pharmacy to fully comply with all provisions of this Agreement including, without limitation, the requirement that modifications or limitations that County of Clackamas has agreed to adhere to with regards to the use and disclosure of Protected Health Information of any individual that materially affects and/or limits the uses and disclosures that are otherwise permitted will be communicated to Pharmacy, in writing, and in a timely fashion;
 - g) it will reasonably cooperate with County of Clackamas in the performance of the mutual obligations under this Agreement;
 - h) the execution and delivery of this Agreement and the performance of the duties obligations and transactions contemplated do not and will not contravene, conflict with or violate any agreement, commitment, plan or instrument binding on Pharmacy, including without limitation any participating provider agreement and any third party payer or pharmacy benefit management agreement; and
 - i) it, nor its shareholders, members, directors, officers, agents, employees or members of its workforce have been excluded or served a notice of exclusion or have been served with a notice of proposed exclusion, or have committed any acts which are cause for exclusion, from participation in, or had any sanctions, or civil or criminal penalties imposed under, any federal or state healthcare program, including but not limited to Medicare or Medicaid, or have been convicted, under federal or state law (including without limitation a plea of nolo contendere or participation in a first offender deterred adjudication or other arrangement whereby a judgment of conviction has been withheld), of a criminal offense related to (a) the neglect or abuse of a patient, (b) the delivery of an item or service, including

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the performance of management or administrative services related to the delivery of an item or service, under a federal or state healthcare program, (c) fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct in connection with the delivery of a healthcare item or service or with respect to any act or omission in any program operated by or financed in whole or in part by any federal, state or local government agency, (d) the unlawful, manufacture, distribution, prescription or dispensing of a controlled substance, or (e) interference with or obstruction of any investigation into any criminal offense described in (a) through (d) above. Each Party further agrees to notify the other Party immediately after the Party becomes aware that any of the foregoing representation and warranties may be inaccurate or may become incorrect and upon notice that the Party is being investigated in connection with any federal or state healthcare program.

22) **Confidentiality Compliance.**

a) Definitions:

- i) "Designated Record Set" shall have the meaning set out in its definition at 45 C.F.R. § 164.501, as such provision is currently drafted and as it is subsequently updated, amended, or revised.
- ii) "Health Care Operations" shall have the meaning set out in its definition at 45 C.F.R. § 164.501, as such provision is currently drafted and as it is subsequently updated, amended or revised.
- iii) "Privacy Officer" shall have the meaning as set out in its definition at 45 C.F.R. § 164.530(a) (1), as such provision is currently drafted and as it is subsequently updated, amended or revised.
- iv) "Protected Health Information" shall have the meaning as set out in its definition at 45 C.F.R. § 164.501, as such provision is currently drafted and as it is subsequently updated, amended or revised.

b) Pharmacy may:

- i) use the Protected Health Information in its possession for its proper management and administration and to fulfill any present or future legal responsibilities of Pharmacy provided that such uses are permitted under state and federal confidentiality laws.
- ii) disclose the Protected Health Information in its possession to third parties for the purpose of its proper management and administration or to fulfill any present or future legal responsibilities of Pharmacy, provided that Pharmacy represents to County of Clackamas, in writing, that (i) the disclosures are required by law, as provided for in 45 C.F.R. § 164.501 or (ii) Pharmacy has received from the third party written assurances regarding its confidential handling of such Protected Health Information as required under 45 C.F.R. § 164.504(e)(4).
- iii) aggregate the Protected Health Information in its possession with the Protected Health Information of other covered entities that Pharmacy has in its possession through its capacity as a business associate to said other covered entities provided that the purpose of such aggregation is to provide County of Clackamas with data analyses relating to the Health Care Operations of County of Clackamas. Under no circumstances may Pharmacy disclose Protected Health Information of one covered entity to another covered entity absent the explicit authorization of County of Clackamas.
- iv) de-identify any and all Protected Health Information provided that the de-identification conforms to the requirements of 45 C.F.R. § 164.514(b), and further provided that County of Clackamas maintains the documentation required by 45 C.F.R. § 164.514(b) which may be in the form of a

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written assurance from Pharmacy. Pursuant to 45 C.F.R. § 164.502(d)(2), de-identified information does not constitute Protected Health Information and is not subject to the terms of this Agreement.

- c) Responsibilities of Pharmacy with respect to Protected Health Information. With regard to its use and/or disclosure of Protected Health Information, Pharmacy hereby agrees to do the following:
- i) use and/or disclose the Protected Health Information only as permitted or required by this Agreement or as otherwise required by law.
 - ii) report to the designated Privacy Officer of County of Clackamas, in writing, any use and/or disclosure of the Protected Health Information that is not permitted or required by this Agreement of which Pharmacy becomes aware within 5 business days of Pharmacy discovery of such unauthorized use and/or disclosure.
 - iii) establish procedures for mitigating, to the greatest extent possible, any deleterious effects from any improper use and/or disclosure of Protected Health Information that Pharmacy reports to County of Clackamas.
 - iv) use commercially reasonable efforts to maintain the security of the Protected Health Information and to prevent unauthorized use and/or disclosure of such Protected Health Information.
 - v) require all of its subcontractors and agents that receive or use, or have access to, Protected Health Information under this Agreement to agree, in writing, to adhere to the same restrictions and conditions on the use and/or disclosure of Protected Health Information that apply to Pharmacy pursuant to this Agreement.
 - vi) make available all records, books, agreements, policies and procedures relating to the use and/or disclosure of Protected Health Information to the Secretary of the Department of Health and Human Services for purposes of determining County of Clackamas's compliance with the Privacy Regulation, subject to attorney-client and other applicable legal privileges.
 - vii) upon prior written request, make available during normal business hours at Pharmacy offices all records, books, agreements, policies and procedures relating to the use and/or disclosure of Protected Health Information to County of Clackamas within 10 business days for purposes of enabling County of Clackamas to determine Pharmacy compliance with the terms of this Agreement.
 - viii) within 45 days of receiving a written request from County of Clackamas, provide to County of Clackamas such information as is requested by QE to permit QE to respond to a request by an individual for an accounting of the disclosures of the individual's Protected Health Information in accordance with 45 C.F.R. § 164.528.
 - ix) except as required by state or federal law, return to County of Clackamas or destroy, within 5 business days of the termination of this Agreement, the Protected Health Information in its possession and retain no copies (which for purposes of this Agreement shall mean destroy all backup tapes).
 - x) disclose to its subcontractors, agents or other third parties, and request from QE, only the minimum Protected Health Information necessary to perform or fulfill a specific function required or permitted hereunder.

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d) Responsibilities of County of Clackamas with respect to Protected Health Information. With regard to the use and/or disclosure of Protected Health Information by Pharmacy, County of Clackamas hereby agrees:

- i) to inform Pharmacy of any changes in the form of notice of privacy practices (the "Notice") that County of Clackamas provides to individuals pursuant to 45 C.F.R. §164.520, and to provide Pharmacy a copy of the Notice currently in use.
- ii) to inform Pharmacy of any changes in, or withdrawal of, the consent or authorization provided to County of Clackamas by individuals pursuant to 45 C.F.R. §164.506 or §164.508.
- iii) to inform Pharmacy of any opt-outs exercised by any individual from marketing and/or fundraising activities of County of Clackamas pursuant to 45 C.F.R. § 164.514(e) and (f).
- iv) to notify Pharmacy, in writing and in a timely manner, of any arrangements permitted or required of County of Clackamas under 45 C.F.R. Parts 160 and 164 that may impact in any manner the use and/or disclosure of Protected Health Information by Pharmacy under this Agreement, including, but not limited to, restrictions on use and/or disclosure of Protected Health Information as provided for in 45 C.F.R. § 164.522 agreed to by County of Clackamas.
- v) that Pharmacy may make any use and/or disclosure of Protected Health Information permitted under 45 C.F.R. § 164.512 except uses or disclosure for research is not permitted without prior approval by County of Clackamas.

e) Survival of Obligations. The rights and obligations set forth in this Section 22 shall survive the termination of this Agreement.

23) Non-disclosure/Non-solicitation.

- a) Non-disclosure. In the course of performing under this Agreement, Pharmacy may receive, be exposed to or acquire Confidential Information including but not limited to, all information, data, reports, records, summaries, tables and studies, whether written or oral, fixed in hard copy or contained in any computer data base or computer readable form, as well as any information identified as confidential of the QE or RXS ("Confidential Information"). Without limiting the foregoing, Pharmacy acknowledges and agrees that this Agreement, including the pricing terms of this Agreement, constitutes Confidential Information. For purposes of this Agreement, Confidential Information shall not include Protected Health Information, the security of which is the subject of this Agreement and is provided for elsewhere. Pharmacy including its employees, agents or representatives (i) shall not disclose to any third party the Confidential Information except as otherwise permitted by this Agreement, (ii) only permit use of such Confidential Information by employees, agents and representatives having a need to know in connection with performance under this Agreement, and (iii) advise each of their employees, agents, and representatives of their obligations to keep such Confidential Information confidential. Notwithstanding anything to the contrary herein, each Party shall be free to use, for its own business purposes, any ideas, suggestions, concepts, know-how or techniques contained in information received from each other that directly relates to the performance under this Agreement. This provision shall not apply to Confidential Information: (1) after it becomes publicly available through no fault of either Party; (2) which is later publicly released by either Party in writing; (3) which is lawfully obtained from third parties without restriction; or (4) which can be shown to be previously known or developed by either Party independently of the other Party.
- b) Non-solicitation. During the term of this Agreement and for one (1) year after the termination thereof the Pharmacy will not hire, seek to hire or assist in hiring any employee, agent or independent

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contractor of County of Clackamas or of RXS or induce or seek to induce or take action which results in the termination of employment or other arrangements between County of Clackamas or RXS, and such employee, agent or independent contractor or otherwise interferes with such employment or contractual arrangements.

- c) **Enforcement.** Pharmacy acknowledges and agrees that any breach by it of any of the provisions of Sections 23(a) or 23(b) (the "Restrictive Covenants") would result in irreparable injury and damage for which money damages would not provide an adequate remedy. Therefore, if the Pharmacy breaches, or threatens to commit a breach of, any of the Restrictive Covenants, County of Clackamas shall have the right and remedy (upon compliance with any necessary prerequisites imposed by law upon the availability of such remedy), which shall be independent and severally enforceable, and which shall be in addition to, and not in lieu of, any other rights and remedies available to County of Clackamas under law or in equity (including, without limitation, the recovery of damages), to have the Restrictive Covenants specifically enforced (without posting bond and without the need to prove damages) by any court having equity jurisdiction, including, without limitation, the right to an entry against Pharmacy of restraining orders and injunctions (preliminary, mandatory, temporary and permanent), without posting bond and without the need to prove damages, against violations, threatened or actual, and whether or not then continuing, of such covenants. The existence of any claim or cause of action by Pharmacy, whether predicated on this Agreement or otherwise, shall not constitute a defense to the enforcement of the Restrictive Covenants. In addition, any breach of the Restrictive Covenants shall constitute a material breach of this Agreement.

- 24) **Entire Agreement.** This Agreement represents the entire understanding of the parties. There are no other agreements or understandings between the parties, either oral or written, relating to Covered Drugs. Any amendments to this Agreement shall be in writing and signed by both parties

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above written.

Initials: _____

Initials: _____

Genoa Healthcare, LLC

By: _____

Name: _____

Its: _____

Owner, President, Officer Title

State License No. _____

Federal DEA No. _____

Address: _____

County of Clackamas

By: _____

Name: _____

Its: _____

Owner, President, Officer Title

Initials: _____

Initials: _____

September 20, 2018

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Service Agreement with Genoa (Hilltop) partnering
with Clackamas County Health Centers Division
in participation with 340B Pharmacy Services Agreement

Purpose/Outcomes	The intent of the Service Agreement is to facilitate Clackamas County Health Centers Division (CCHCD) participation in the 340B drug program.
Dollar Amount and Fiscal Impact	The Agreement has no maximum value as it will generate revenue for Clackamas County's Federally Qualified Health Center (FQHC). This will enter CCHCD and Genoa into a "ship to/bill to" arrangement wherein Genoa will dispense prescription drugs on behalf of CCHCD and then charge and collect fees for such drugs.
Funding Source	No County General Funds are involved. This is revenue generating through the 340B Drug Program.
Duration	Effective upon signature and terminates with the Third Party Drug Administrator Agreement (RxStrategies, 6/30/23).
Strategic Plan Alignment	1. Provide patient-centered health center services to vulnerable populations so they can experience improved health. 2. Ensure safe, health and secure communities
Previous Board Action	There has been no previous board action on this item.
Contact Person	Deborah Cockrell, FQHC Director – 503-742-5495
Contract No.	9003

BACKGROUND:

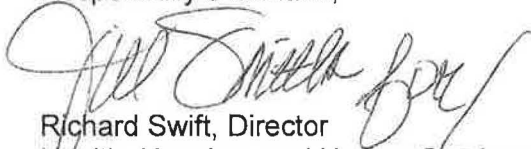
The Clackamas County Health Centers Division (CCHCD) requests the approval of a Service Agreement for the transition of the Third Party Administrator (TPA) of the 340B Program managed by CCHCD. The incumbent is NEC Networks, and will be replaced with RxStrategies. The TPA manages the prescription drug virtual inventory of various pharmacies utilized by CCHCD. This agreement reflects the TPA change for the Genoa Hilltop pharmacy location. Participation in the 340B Drug Program allows the purchase of prescription drugs for CCHCD patients at favorable discounts from drug manufacturers. Selection of RxStrategies replacing NEC Networks was done through a competitive RFP that was awarded on January 11, 2018. County Counsel reviewed and approved this agreement on August 30, 2018.

This Agreement is effective upon signature and continues through June 30, 2023,
(termination of the Third Party Administrator Agreement, RxStrategies).

RECOMMENDATION:

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

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Richard Swift", is written over the printed name.

Richard Swift, Director
Health, Housing, and Human Services

PHARMACY SERVICE AGREEMENT

#9003

THIS AGREEMENT is made this ____ day of _____, 201____, by and between *County of Clackamas*, a Oregon City nonprofit corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code, (hereinafter "(Qualified Entity)" or "County of Clackamas") and, Genoa A QOL Healthcare Company, LLC, with licensed pharmacies located at the locations shown in Exhibit B. (hereinafter "Pharmacies").

WHEREAS, County of Clackamas is a "Covered Entity" as defined in Section 340B of the Public Health Service Act (hereinafter "Section 340B") and is eligible to purchase certain outpatient drugs at reduced prices for use by Eligible Patients, as defined in this Agreement, from drug manufacturers who have signed a drug purchasing agreement with the United States Department of Health and Human Services (hereinafter "DHHS") and/or the manufacturers' wholesalers;

WHEREAS, County of Clackamas provides health care services to Eligible Patients at the sites listed in Exhibit A (the "QE Site");

WHEREAS, County of Clackamas has engaged RxStrategies, Inc. ("RXS") to manage the pharmacy services and pharmacy relationship of County of Clackamas,

WHEREAS, the system, procedures and processes of RXS (past, current and future) remain the sole property of RXS and cannot be used by the County of Clackamas and/or the Pharmacy independent of this agreement in perpetuity without the written consent of RXS,

WHEREAS, Pharmacy is duly licensed as a pharmacy in the State of *Oregon* and

WHEREAS, County of Clackamas desires to engage Pharmacy to provide Pharmacy Services, as defined in this Agreement, to Eligible Patients on behalf of Qualified Entity with respect to outpatient drugs purchased pursuant to Section 340B.

NOW, THEREFORE, the parties agree as follows:

- 1) **Eligible Patients.** An individual will be considered an Eligible Patient under this Agreement if the following conditions are met:
 - a) County of Clackamas has established a relationship with the individual, such that County of Clackamas maintains records of the individual's health care;
 - b) The individual receives health care services from a health care professional who is either employed by County of Clackamas or under contract with County of Clackamas such that responsibility for the care remains with QE;
 - c) The individual receives a health care service or range of services from County of Clackamas which is consistent with the service or range of services for which grant funding, listed in Section 340B, or Federally qualified health County of Clackamas look-alike status has been granted County of Clackamas; and
 - d) The individual receives health care services at the County of Clackamas Site.

Initials: _____

Initials: _____

- i) An individual will not be considered an Eligible Patient if the only health care service provided by County of Clackamas to the individual is the dispensing of a drug or drugs for subsequent self-administration or administration in the home setting. Notwithstanding the foregoing, individuals registered in a State operated or funded AIDS drug purchasing assistance program receiving financial assistance under Title XXVI of the Public Health Services Act are considered Eligible Patients.
 - e) The patient is not eligible for the 340B program if the individual is part of a fee for service Medicaid program provided by the State; or, any other program the is deemed ineligible for the 340B program as specified by law, statute or administrative ruling.
- 2) **Covered Drugs.** The prescription outpatient drugs covered by this Agreement (hereinafter "Covered Drugs") are listed on Attachment A of this Agreement. The parties agree that County of Clackamas may add or remove Covered Drugs from Attachment A at its sole discretion during the life of this Agreement. Drug substitution may only be made in compliance with an approved substitution notice from the manufacturer.
- 3) **Purchases, Shipment and Pricing of Drugs.**
- a) Pharmacy shall maintain sufficient supplies of such drugs to meet the day-to-day needs of Eligible Patients. County of Clackamas will replenish Pharmacy's inventory for Covered Drugs dispensed to Eligible Patients for which payment under this Agreement was received by Pharmacy. County of Clackamas reserves the right to make appropriate substitutions of drugs as required by the manufacturer. County of Clackamas shall arrange to be billed directly for Covered Drugs by the manufacturer/wholesaler(s), and arrange for shipment of such drugs directly to the Pharmacy or the designated warehouse of the Pharmacy as requested by the pharmacy. Replenished drugs that are in "overstock" status remain the property of the QE. County of Clackamas, through RXS, shall establish all retail prices for Covered Drugs for all Eligible Patients as provided in Attachment A, which may be amended from time to time by County of Clackamas.
 - b) In order to facilitate the timeliness of the inventory replenishment process and ensure that drug replenishment is consistent with current and historical practices of the Pharmacy, Pharmacy shall provide, if requested by RXS, the following documentation and information to RXS upon execution of this Agreement:
 - i) Identification of all pharmaceutical wholesalers;
 - ii) Velocity reports for the most recent past three-month period from all wholesalers;
 - iii) List of inventory items by NDC with Usual and Customary prices;
 - iv) List of Pharmacy's third party payer agreements with provider numbers and evidence of Medicaid and Medicare participation;
 - v) A description of the Pharmacy's computer and communication equipment, including computers, printers, fax machines, number of telephone lines, Internet connectivity, e-mail pharmacy software version and release, and how drug database updates are handled and by whom; and
 - vi) Such other documentation and information as reasonably requested by RXS in support of the 340B program addressed in this agreement.
 - c) If at the end of any 120-day period after a drug has been dispensed, the QE is unable to replenish the dispensed drug to the Pharmacy, the QE will reimburse the Pharmacy for the cost of the drug

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dispensed at the documented cost of the drug to the Pharmacy. If the Pharmacy cannot produce appropriate documentation (e.g., invoice from wholesaler or manufacturer) for the cost of the drug, then the QE will reimburse the Pharmacy at the prevailing 340B price.

- d) At the termination of the Agreement, the contract pharmacy must attest to the QE that all 340B drugs in inventory in excess of requirement ("Overstock") have been destroyed and therefore cannot be used in general commerce. Written notification of the destruction will be provided to the QE.
- 4) **Tracking System.** The parties to this Agreement understand that, pursuant to Section 340B, County of Clackamas is liable to the manufacturer of Covered Drugs in an amount equal to the reduction in the price of Covered Drugs in the event that a discounted Covered Drug is sold or otherwise transferred to a person who is not an Eligible Patient. County of Clackamas shall establish and maintain a tracking system suitable to prevent the diversion of Covered Drugs to individuals who are not Eligible Patients. County of Clackamas will establish a process for periodic random (sample) comparison of its prescribing records with Pharmacy's dispensing records to detect potential irregularities. Said comparison will be conducted quarterly and comparison of purchasing and dispensing records will be performed every six months.
- a) Pharmacy agrees to use the provider identified by RXS for pre-adjudication of all claims. Pharmacy agrees to make any and all adjustments to purchasing and dispensing records that County of Clackamas advises are reasonably necessary to prevent diversion of Covered Drugs to individuals who are not Eligible Patients.
- 5) **Prescriptions.** Pharmacy shall dispense Covered Drugs only in the following circumstances:
- a) Upon presentation of a prescription form bearing an eligible prescriber's name, the Eligible Patient's name, or
- b) Upon receipt of a prescription ordered during normal business hours of the QE by telephone, facsimile or electronic transmission on behalf of an Eligible Patient by a legally qualified health care provider.
- c) County of Clackamas will furnish lists to Pharmacy of all Eligible Patients and eligible prescribers and will update the lists to reflect any changes.
- 6) **Pharmacy Services.** Pharmacy shall provide the following services (with assistance from RXS where necessary or requested):
- a) Dispensing Covered Drugs to Eligible Patients in accordance with all applicable State and Federal statutes and regulations and the professional judgment of the dispensing pharmacist;
- b) Participating in all pre- and post-adjudication programs as directed by County of Clackamas or RXS as well as all data collection or auditing programs, plans and procedures as may be of assistance to County of Clackamas or RXS in order to establish or verify costs, charges, reimbursement rates, billing, payments or receipts;
- c) Participating in third party payer arrangements in which the QE participates or which the QE may request. Pharmacy shall make all best efforts to enter into all such third party payer arrangements prior to the Commencement Date;
- d) Maintaining all records and reports (including without limitation, prescription files, velocity reports and records of ordering and receipt) required under this Agreement, Section 340B, and by any applicable Federal and State law and regulations, which shall be separate from Pharmacy's own operations and records, and shall be accessible to County of Clackamas, DHHS and the manufacturer/wholesaler in the case of audit. Such records shall be retained for not less than five

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years after the Pharmacy Services are rendered, and shall be available for inspection or audit by County of Clackamas and as otherwise permitted by law and this Agreement;

- e) No drug substitutions other than those directed by the manufacturer will be made without the consent of the QE;
 - f) Conducting Eligible Patient drug utilization review;
 - g) Conducting formulary maintenance, including providing drug-related information services to County of Clackamas clinical personnel, consulting with County of Clackamas on the purchase of Covered Drugs, and identifying and disposing of Covered Drugs in its inventory which are out of date;
 - h) Maintaining Eligible Patient drug profiles;
 - i) Counseling and advising Eligible Patients consistent with the rules, limitations, and privileges incident to the pharmacy-patient relationship; and
 - j) Determining if a particular Eligible Patient is covered by a governmental or private insurance program, and if covered, will obtain the necessary authorization(s) or benefit payment for Covered Drugs.
- 7) **Relationship of the Parties.** Pharmacy is an independent contractor and shall be solely responsible for its acts and omissions regarding advice and services it is required to provide to Eligible Patients and County of Clackamas. Pharmacy agrees to render all services provided under this Agreement in accordance with professional standards applicable to pharmacy services and in accordance with rules and regulations of the State Board of Pharmacy. Pharmacy shall have the right to refuse to serve any Eligible Patient where such service would violate any statute, regulations, or professional standards applicable to pharmacy services. Pharmacy shall notify County of Clackamas of any refusal of service within twenty-four (24) hours of such refusal.
- i) Pharmacy understands and acknowledges that RXS has been engaged by County of Clackamas to manage pharmacy services and the relationship with Pharmacy. Accordingly, Pharmacy acknowledges that RXS is and will act as agent for County of Clackamas. All obligations, duties, functions or tasks of County of Clackamas as described herein may be carried out by RXS, as agent for County of Clackamas. Unless advised to the contrary, Pharmacy shall provide all reports required hereunder to RXS, as agent for County of Clackamas, and shall seek assistance from RXS, not County of Clackamas, for all problems and issues regarding the services, duties and obligations hereunder.
- 8) **Pharmacy Site.** Pharmacy agrees it will provide Pharmacy Services contracted for under this Agreement at the sites listed in Exhibit B.
- 9) **Payment for Services.** Pharmacy shall be paid for Pharmacy Services in accordance with the terms provided on Attachment B to this Agreement. County of Clackamas and Pharmacy have freely negotiated the terms of this Agreement and neither has offered or received any inducement or other consideration from the other party for entering into this Agreement. The compensation to be paid to Pharmacy is consistent with fair market value in arms-length transactions for Pharmacy Services and is not determined in a manner that takes into account the volume or value of any referrals or business otherwise generated between the parties for which payment may be made in whole or in part under a Federal or State health care program. Nothing in this Agreement shall be construed to require County of Clackamas to make referrals of patients to Pharmacy.
- 10) **Patient Choice.** Pharmacy understands and agrees that Eligible Patients of County of Clackamas may elect not to use Pharmacy for Pharmacy Services. In the event that an Eligible Patient elects not to use

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Pharmacy for such services, the patient may obtain the prescription from the prescriber and then obtain the drug(s) from the pharmacy provider of his or her choice.

11) **Quarterly Reports and Financial/Operational Reviews.**

- a) RXS with the assistance of the Pharmacies shall provide County of Clackamas with quarterly financial statements, a detailed status report of collections, and a summary of receiving and dispensing records in a form satisfactory to County of Clackamas. The provisions of this Section 11 shall survive the expiration or termination of this Agreement for any reason.
- b) RXS, County of Clackamas and Pharmacy will review the financial and operational performance of the 340B program via on-site or web based meetings on the following schedule:
 - i) After the first 90 days of operation
 - ii) Annually on or near the anniversary of the commencement of operations
- c) Topics of discussion and review in the financial/operational review will include; but, not be limited to: review of dispensing fees; total prescription volume processed in the program; brand and generic mix of prescriptions processed; inventory management and replenishment; financial viability of the program; and, any other topics the parties agree upon.

12) **Prohibition on Resale or Transfer.** Pharmacy agrees that it will not resell or transfer a Covered Drug ordered under this Agreement pursuant to Section 340B to an individual who is not an Eligible Patient of County of Clackamas. Pharmacy further agrees that, in the event of transfer, diversion, or resale of a Covered Drug in violation of this Agreement, it will pay County of Clackamas an amount equal to the price discount County of Clackamas received from the manufacturer/wholesaler so that the QE can reimburse the manufacturer/wholesaler as provided in Section 4. For purposes of this provision, the QE's determination of the amount of the discount on a Covered Drug payable to the manufacturer shall be conclusive.

- a) County of Clackamas agrees that it will not resell or transfer a Covered Drug to an individual who is not an Eligible Patient.

13) **Audits.**

- a) Pharmacy understands and agrees that both Pharmacy and County of Clackamas are subject to audit by DHHS and by drug manufacturers who have signed a drug purchasing agreement with DHHS, which audits may pertain to the QE's compliance with the prohibition on drug resale or transfer and the prohibition on duplicate Medicaid rebates and discounts. Pharmacy further understands that the DHHS has published proposed guidelines for such audits, a copy of which is attached hereto as Attachment C. Pharmacy agrees to cooperate with such audits and to comply with applicable provisions of the audit guidelines and amendments thereto that may be published from time to time.
- b) Pharmacy grants RXS the right, on behalf of the QE to audit its books and records (including all electronic records) using any reasonable means to verify and ensure compliance with the duties, obligations and transactions outlined hereunder. Pharmacy agrees to use its best efforts to cooperate with such audits in good faith.
- c) The provisions of this Section 13 shall survive the expiration or termination of this Agreement for any reason.
- d) Copies of this agreement may be provided to the Office of Pharmacy Affairs upon request.

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- 14) **Inspection by Manufacturer.** Pharmacy and County of Clackamas understand and agree that a copy of this Pharmacy Services Agreement will be provided, upon request, to a drug manufacturer who has signed a purchasing agreement with DHHS and sells Covered Drugs to County of Clackamas. In the event either party receives such a request, it shall immediately inform the other party and each party shall then have the opportunity to delete any information in this Agreement and attachments which it considers to be proprietary and confidential prior to submitting the Agreement to the requesting manufacturer. The provisions of this Section 14 shall survive the expiration or termination of this Agreement for any reason.
- 15) **Insurance.** Pharmacy shall maintain during the term of this Agreement a policy of liability insurance with a responsible insurance carrier in an amount not less than \$100,000 per incident and which includes the Covered Drugs in its coverage.
- 16) **Indemnification.** Pharmacy agrees to indemnify and hold County of Clackamas and RXS harmless from any loss, damage or cost (including reasonable attorney fees) it may incur as a result of any wrongful acts or omission of Pharmacy with respect to this Agreement. County of Clackamas agrees to indemnify and hold Pharmacy harmless from any loss, damage or cost (including reasonable attorney fees) it may incur as a result of any wrongful acts or omissions of County of Clackamas with respect to this Agreement.
- 17) **Non-Assignment.** This Agreement may not be assigned by either party without the prior written agreement of the other party and RXS.
- 18) **Term and Termination.**
- a) This Agreement shall commence on _____, 201__ (the "Commencement Date"), and shall continue in effect for 3 years from the Commencement Date. Thereafter, this Agreement shall automatically renew for consecutive one (1) year periods until terminated as provided below.
 - b) This Agreement may be terminated by either party as follows for any one of the provisions listed:
 - i) Mutual agreement of the parties.
 - ii) Sixty (60) days prior written notice by either party without cause.
 - iii) Termination or expiration of the QE and RxStrategies agreement.
 - iv) County of Clackamas, immediately and without prior notice, upon a material breach of this Agreement by Pharmacy. Without limiting County of Clackamas's right to assert any other act or failure to act as constituting a material breach by Pharmacy, Pharmacy's dispensing of a Covered Drug to an individual who is not an Eligible Patient or any other diversion of a Covered Drug shall be deemed to be a material breach. County of Clackamas's waiver or failure to take action with respect to Pharmacy's failure to comply with any term or provision of this Agreement shall not be deemed to be a waiver of County of Clackamas's right to insist on future compliance with such term or provision.
 - c) Any notice required to be given pursuant to the terms and provisions of this Agreement shall be in writing and shall be sent by certified or registered mail, return receipt requested, to the parties at the addresses set forth on the signature pages hereto. Notice shall be effective on the day it is mailed.
 - d) Upon the request of County of Clackamas, Pharmacy agrees to continue to provide Pharmacy Services for a period of up to sixty (60) days after the date this Agreement expires or is terminated in order to ensure an effective transition of services and continuation of quality care for Eligible Patients.

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- 19) **Compliance with Laws.** The parties hereto shall comply with all applicable federal, state and local laws, rules, regulations and requirements. County of Clackamas shall comply with all rules and regulations governing its Health Resources and Service Administration grant funding.
- 20) **Choice of Law.** This Agreement shall be interpreted according to the laws of the State of Oregon..
- 21) **Representations of Pharmacy.** Pharmacy represents that:
- a) it employs, and will continue to employ throughout the term of this Agreement, sufficient qualified and credentialed personnel needed to manage and operate the Pharmacy and provide the services anticipated hereunder in a timely, professional, competent and ethical manner;
 - b) it owns, possesses and employs, and will continue to employ throughout the term of this Agreement, sufficient technology and equipment as needed to manage and operate the Pharmacy and provide the services in the manner anticipated hereunder;
 - c) it will render the services hereunder in accordance with prevailing pharmaceutical and medical standards that are applied the same fashion to all patients of County of Clackamas;
 - d) it will render all services to Eligible Patients without regard to race, creed, color, age, sex, sexual orientation, citizenship, marital status, veteran status, national origin, disability, religion, arrest record or other protected status;
 - e) it will not use drugs purchased under Section 340B to dispense Medicaid prescriptions, except as provided in an arrangement with the State Medicaid agency as approved by County of Clackamas to prevent duplicate discounting;
 - f) all of its employees, agents, representatives and members of its workforce, whose services may be used to fulfill obligations under this Agreement are or shall be appropriately informed of the terms of this Agreement and are under legal obligation to Pharmacy, by contract or otherwise, sufficient to enable Pharmacy to fully comply with all provisions of this Agreement including, without limitation, the requirement that modifications or limitations that County of Clackamas has agreed to adhere to with regards to the use and disclosure of Protected Health Information of any individual that materially affects and/or limits the uses and disclosures that are otherwise permitted will be communicated to Pharmacy, in writing, and in a timely fashion;
 - g) it will reasonably cooperate with County of Clackamas in the performance of the mutual obligations under this Agreement;
 - h) the execution and delivery of this Agreement and the performance of the duties obligations and transactions contemplated do not and will not contravene, conflict with or violate any agreement, commitment, plan or instrument binding on Pharmacy, including without limitation any participating provider agreement and any third party payer or pharmacy benefit management agreement; and
 - i) it, nor its shareholders, members, directors, officers, agents, employees or members of its workforce have been excluded or served a notice of exclusion or have been served with a notice of proposed exclusion, or have committed any acts which are cause for exclusion, from participation in, or had any sanctions, or civil or criminal penalties imposed under, any federal or state healthcare program, including but not limited to Medicare or Medicaid, or have been convicted, under federal or state law (including without limitation a plea of nolo contendere or participation in a first offender deterred adjudication or other arrangement whereby a judgment of conviction has been withheld), of a criminal offense related to (a) the neglect or abuse of a patient, (b) the delivery of an item or service, including

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the performance of management or administrative services related to the delivery of an item or service, under a federal or state healthcare program, (c) fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct in connection with the delivery of a healthcare item or service or with respect to any act or omission in any program operated by or financed in whole or in part by any federal, state or local government agency, (d) the unlawful, manufacture, distribution, prescription or dispensing of a controlled substance, or (e) interference with or obstruction of any investigation into any criminal offense described in (a) through (d) above. Each Party further agrees to notify the other Party immediately after the Party becomes aware that any of the foregoing representation and warranties may be inaccurate or may become incorrect and upon notice that the Party is being investigated in connection with any federal or state healthcare program.

22) **Confidentiality Compliance.**

a) Definitions:

- i) "Designated Record Set" shall have the meaning set out in its definition at 45 C.F.R. § 164.501, as such provision is currently drafted and as it is subsequently updated, amended, or revised.
- ii) "Health Care Operations" shall have the meaning set out in its definition at 45 C.F.R. § 164.501, as such provision is currently drafted and as it is subsequently updated, amended or revised.
- iii) "Privacy Officer" shall have the meaning as set out in its definition at 45 C.F.R. § 164.530(a) (1), as such provision is currently drafted and as it is subsequently updated, amended or revised.
- iv) "Protected Health Information" shall have the meaning as set out in its definition at 45 C.F.R. § 164.501, as such provision is currently drafted and as it is subsequently updated, amended or revised.

b) Pharmacy may:

- i) use the Protected Health Information in its possession for its proper management and administration and to fulfill any present or future legal responsibilities of Pharmacy provided that such uses are permitted under state and federal confidentiality laws.
- ii) disclose the Protected Health Information in its possession to third parties for the purpose of its proper management and administration or to fulfill any present or future legal responsibilities of Pharmacy, provided that Pharmacy represents to County of Clackamas, in writing, that (i) the disclosures are required by law, as provided for in 45 C.F.R. § 164.501 or (ii) Pharmacy has received from the third party written assurances regarding its confidential handling of such Protected Health Information as required under 45 C.F.R. § 164.504(e)(4).
- iii) aggregate the Protected Health Information in its possession with the Protected Health Information of other covered entities that Pharmacy has in its possession through its capacity as a business associate to said other covered entities provided that the purpose of such aggregation is to provide County of Clackamas with data analyses relating to the Health Care Operations of County of Clackamas. Under no circumstances may Pharmacy disclose Protected Health Information of one covered entity to another covered entity absent the explicit authorization of County of Clackamas.
- iv) de-identify any and all Protected Health Information provided that the de-identification conforms to the requirements of 45 C.F.R. § 164.514(b), and further provided that County of Clackamas maintains the documentation required by 45 C.F.R. § 164.514(b) which may be in the form of a

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written assurance from Pharmacy. Pursuant to 45 C.F.R. § 164.502(d)(2), de-identified information does not constitute Protected Health Information and is not subject to the terms of this Agreement.

c) Responsibilities of Pharmacy with respect to Protected Health Information. With regard to its use and/or disclosure of Protected Health Information, Pharmacy hereby agrees to do the following:

- i) use and/or disclose the Protected Health Information only as permitted or required by this Agreement or as otherwise required by law.
- ii) report to the designated Privacy Officer of County of Clackamas, in writing, any use and/or disclosure of the Protected Health Information that is not permitted or required by this Agreement of which Pharmacy becomes aware within 5 business days of Pharmacy discovery of such unauthorized use and/or disclosure.
- iii) establish procedures for mitigating, to the greatest extent possible, any deleterious effects from any improper use and/or disclosure of Protected Health Information that Pharmacy reports to County of Clackamas.
- iv) use commercially reasonable efforts to maintain the security of the Protected Health Information and to prevent unauthorized use and/or disclosure of such Protected Health Information.
- v) require all of its subcontractors and agents that receive or use, or have access to, Protected Health Information under this Agreement to agree, in writing, to adhere to the same restrictions and conditions on the use and/or disclosure of Protected Health Information that apply to Pharmacy pursuant to this Agreement.
- vi) make available all records, books, agreements, policies and procedures relating to the use and/or disclosure of Protected Health Information to the Secretary of the Department of Health and Human Services for purposes of determining County of Clackamas's compliance with the Privacy Regulation, subject to attorney-client and other applicable legal privileges.
- vii) upon prior written request, make available during normal business hours at Pharmacy offices all records, books, agreements, policies and procedures relating to the use and/or disclosure of Protected Health Information to County of Clackamas within 10 business days for purposes of enabling County of Clackamas to determine Pharmacy compliance with the terms of this Agreement.
- viii) within 45 days of receiving a written request from County of Clackamas, provide to County of Clackamas such information as is requested by QE to permit QE to respond to a request by an individual for an accounting of the disclosures of the individual's Protected Health Information in accordance with 45 C.F.R. § 164.528.
- ix) except as required by state or federal law, return to County of Clackamas or destroy, within 5 business days of the termination of this Agreement, the Protected Health Information in its possession and retain no copies (which for purposes of this Agreement shall mean destroy all backup tapes).
- x) disclose to its subcontractors, agents or other third parties, and request from QE, only the minimum Protected Health Information necessary to perform or fulfill a specific function required or permitted hereunder.

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Initials: _____

d) Responsibilities of County of Clackamas with respect to Protected Health Information. With regard to the use and/or disclosure of Protected Health Information by Pharmacy, County of Clackamas hereby agrees:

- i) to inform Pharmacy of any changes in the form of notice of privacy practices (the "Notice") that County of Clackamas provides to individuals pursuant to 45 C.F.R. §164.520, and to provide Pharmacy a copy of the Notice currently in use.
- ii) to inform Pharmacy of any changes in, or withdrawal of, the consent or authorization provided to County of Clackamas by individuals pursuant to 45 C.F.R. §164.506 or §164.508.
- iii) to inform Pharmacy of any opt-outs exercised by any individual from marketing and/or fundraising activities of County of Clackamas pursuant to 45 C.F.R. § 164.514(e) and (f).
- iv) to notify Pharmacy, in writing and in a timely manner, of any arrangements permitted or required of County of Clackamas under 45 C.F.R. Parts 160 and 164 that may impact in any manner the use and/or disclosure of Protected Health Information by Pharmacy under this Agreement, including, but not limited to, restrictions on use and/or disclosure of Protected Health Information as provided for in 45 C.F.R. § 164.522 agreed to by County of Clackamas.
- v) that Pharmacy may make any use and/or disclosure of Protected Health Information permitted under 45 C.F.R. § 164.512 except uses or disclosure for research is not permitted without prior approval by County of Clackamas.

e) Survival of Obligations. The rights and obligations set forth in this Section 22 shall survive the termination of this Agreement.

23) Non-disclosure/Non-solicitation.

- a) Non-disclosure. In the course of performing under this Agreement, Pharmacy may receive, be exposed to or acquire Confidential Information including but not limited to, all information, data, reports, records, summaries, tables and studies, whether written or oral, fixed in hard copy or contained in any computer data base or computer readable form, as well as any information identified as confidential of the QE or RXS ("Confidential Information"). Without limiting the foregoing, Pharmacy acknowledges and agrees that this Agreement, including the pricing terms of this Agreement, constitutes Confidential Information. For purposes of this Agreement, Confidential Information shall not include Protected Health Information, the security of which is the subject of this Agreement and is provided for elsewhere. Pharmacy including its employees, agents or representatives (i) shall not disclose to any third party the Confidential Information except as otherwise permitted by this Agreement, (ii) only permit use of such Confidential Information by employees, agents and representatives having a need to know in connection with performance under this Agreement, and (iii) advise each of their employees, agents, and representatives of their obligations to keep such Confidential Information confidential. Notwithstanding anything to the contrary herein, each Party shall be free to use, for its own business purposes, any ideas, suggestions, concepts, know-how or techniques contained in information received from each other that directly relates to the performance under this Agreement. This provision shall not apply to Confidential Information: (1) after it becomes publicly available through no fault of either Party; (2) which is later publicly released by either Party in writing; (3) which is lawfully obtained from third parties without restriction; or (4) which can be shown to be previously known or developed by either Party independently of the other Party.
- b) Non-solicitation. During the term of this Agreement and for one (1) year after the termination thereof the Pharmacy will not hire, seek to hire or assist in hiring any employee, agent or independent

Initials: _____

Initials: _____

contractor of County of Clackamas or of RXS or induce or seek to induce or take action which results in the termination of employment or other arrangements between County of Clackamas or RXS, and such employee, agent or independent contractor or otherwise interferes with such employment or contractual arrangements.

- c) **Enforcement.** Pharmacy acknowledges and agrees that any breach by it of any of the provisions of Sections 23(a) or 23(b) (the "Restrictive Covenants") would result in irreparable injury and damage for which money damages would not provide an adequate remedy. Therefore, if the Pharmacy breaches, or threatens to commit a breach of, any of the Restrictive Covenants, County of Clackamas shall have the right and remedy (upon compliance with any necessary prerequisites imposed by law upon the availability of such remedy), which shall be independent and severally enforceable, and which shall be in addition to, and not in lieu of, any other rights and remedies available to County of Clackamas under law or in equity (including, without limitation, the recovery of damages), to have the Restrictive Covenants specifically enforced (without posting bond and without the need to prove damages) by any court having equity jurisdiction, including, without limitation, the right to an entry against Pharmacy of restraining orders and injunctions (preliminary, mandatory, temporary and permanent), without posting bond and without the need to prove damages, against violations, threatened or actual, and whether or not then continuing, of such covenants. The existence of any claim or cause of action by Pharmacy, whether predicated on this Agreement or otherwise, shall not constitute a defense to the enforcement of the Restrictive Covenants. In addition, any breach of the Restrictive Covenants shall constitute a material breach of this Agreement.

- 24) **Entire Agreement.** This Agreement represents the entire understanding of the parties. There are no other agreements or understandings between the parties, either oral or written, relating to Covered Drugs. Any amendments to this Agreement shall be in writing and signed by both parties

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above written.

Initials: _____

Initials: _____

Genoa A QOL Healthcare Company, LLC

By: _____

Name: _____

Its: _____

Owner, President, Officer Title

State License No. _____

Federal DEA No. _____

Address: _____

County of Clackamas

By: _____

Name: _____

Its: _____

Owner, President, Officer Title

Initials: _____

Initials: _____

September 20, 2018

Board of County Commissioners
Clackamas County

Members of the Board:

Approval for an Intergovernmental Agreement with the
Oregon Trail School District #46 for the Sandy School Based Health Center

Purpose/Outcomes	This agreement enters into an Intergovernmental Agreement with the Oregon Trail School District #46 for the Sandy School Based Health Center (SBHC).
Dollar Amount and Fiscal Impact	This agreement has a contract value of \$50,000.
Funding Source	No County General Funds involved. Funding through revenue of 340B program.
Duration	Upon signature – October 31, 2018
Previous Board Action	No Previous Board Action.
Strategic Plan Alignment	1. Improved community safety and health 2. Ensure safe, healthy and secure communities
Contact Person	Deborah Cockrell 503-742-5495
Contract No.	8777

Background

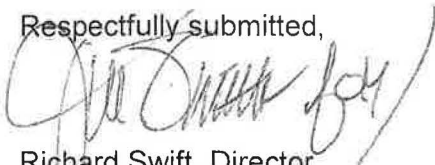
The Clackamas County Health Centers Division (CCHCD) of the Health, Housing and Human Services Department requests the approval of an Intergovernmental Agreement with the Oregon Trail School District #46 for the Sandy SBHC clinic. This agreement increases healthcare services to the Oregon Trail School District by providing funding for an additional exam room.

The contract value is \$50,000. This agreement is effective upon signature and will expire on October 31, 2018. County Counsel reviewed this Agreement on July 23, 2018.

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, and Human Services

Contract Amendment
Health, Housing and Human Services Department

H3S Contract Number 8561 Board Agenda Number N/A (under \$150k)

and Date 8/14/18

Division Health Centers Amendment No. 3

Contractor Comp Health

Amendment Requested By Ed Johnson

Changes: ☐ Scope of Services ☒ Contract Budget
☒ Contract Time ☐ Other _____

Justification for Amendment:

This Amendment updates Section 5 – Terms, Cancellation and Removal of Physician, paragraph 5.E.Term, to reflect a change in the compensation by adding \$250,000, to pay for services through June 30, 2019. These services are needed to cover clinical staffing and provide no breaks in service while the RFP is being developed. This will increase the contract value by \$250,000, making the new total contract value \$724,000.

This amendment is effective **upon signature** and continues through **June 30, 2019**.

Except as amended hereby, all other terms and conditions of the Contract remain in full force and effect. The County has identified the changes with "***bold/italic***" font for easy reference.

AMEND:

5. TERM, CANCELLATION AND REMOVAL OF PHYSICIAN

5.E. Term. The term of this Agreement ("Term") shall begin on the Effective Date and continue for a period of one (1) year. The Parties agree that the maximum Agreement value shall not exceed \$474,000.

TO READ:

5. TERM, CANCELLATION AND REMOVAL OF PHYSICIAN

5.E. Term. The term of this Agreement ("Term") shall begin on the Effective Date and continue ***until June 30, 2019***. The Parties agree that the maximum Agreement value shall not exceed ***\$724,000***.

Signature Page to Follow

COMPHEALTH

Professional Services Contract – Amendment #03

Page 2 of 2

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their duly authorized officers.

COMPHEALTH

By:  _____
Name and Title Director

August 15, 2018
Date

7529 Bingham Jct. Blvd.
Street Address

Midvale, UT 84047
City/State/Zip

(801) 930-3481 /
Phone

/ Fax

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 Department

Date

September 20, 2018

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Professional Services Agreement for
Clackamas County Health Centers Division with
CompHealth Locum Tenens for temporary physician staff.

Purpose/Outcomes	This Agreement is to provide physician staffing for Clackamas County Health Centers Division (CCHCD) clinics that serve community members.
Dollar Amount and Fiscal Impact	The Agreement has a maximum value \$724,000. This agreement is funded through revenue generated from the fees for services provided at CCHCD clinics.
Funding Source	Health Centers fee for services. No County General Funds are involved.
Duration	Effective upon signature and terminates on June 30, 2019.
Strategic Plan Alignment	1. Efficient and Effective Services. 2. Ensure safe, healthy and secure communities
Previous Board Action	Previous Board Action on February 22, 2018. Agenda item 022218-A3
Contact Person	Deborah Cockrell, FQHC Director – 503-742-5495
Contract No.	8561_03

BACKGROUND:

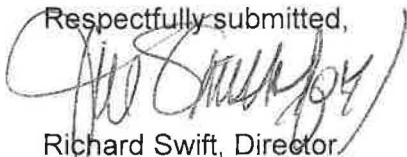
The Clackamas County Health Centers Division (CCHCD) of the Health, Housing & Human Services Department requests the approval of the Professional Service Agreement with CompHealth Locum Tenens for temporary physician staff.

The physician position remains vacant. These services are used to supplement coverage at the CCHCD clinics while vacancies are filled. A Request for Proposal (RFP) is being developed, and this amendment allows no disruption in services. The additional funding of \$250,000, brings the maximum contract value to \$747,000. This amendment is effective upon signature and continues through June 30, 2018. County Counsel approved this Agreement on September 4, 2018.

RECOMMENDATION:

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

Respectfully submitted,



Richard Swift, Director
Health, Housing, and Human Services

INTERGOVERNMENTAL AGREEMENT
BETWEEN
CLACKAMAS COUNTY, OREGON
HEALTH CENTERS DIVISION
AND
OREGON TRAIL SCHOOL DISTRICT NO. 46

#8777

I. Purpose

This agreement is entered into between Clackamas County Department of Health, Housing and Human Services, Health Centers Division (CCHCD) and OREGON TRAIL SCHOOL DISTRICT NO. 46 (OTSD) for the cooperation of units of local government under the authority of ORS 190.010.

This agreement provides the basis for funding for the Sandy High School - School Based Health Centers (SBHC) new exam room.

II. Scope of Work and Cooperation

A. OTSD agrees to:

1. OTSD and any subcontractors agree to clean up all construction materials associated with the project by 2pm, Monday - Friday, when work has been performed in order to assure the safety of staff and clients that may be entering the worksite. Efforts will be made to ensure that any hazards are appropriately mitigated to prevent harm to CCHCD staff and/or clients that enter the site, up to and including: fumes, debris, dust, etc.
2. OTSD will follow the Projected Construction Schedule as outlined in Exhibit A.

B. CCHCD agrees to:

1. Provide funding for the construction of a new examination room in Sandy's SBHC. The new exam room will be open to patients by September 1, 2018.
2. CCHCD agrees to provide a deposit of \$8,000 upon full execution of this agreement. CCHCD also agrees to pay a 15% Administration Fee at the completion of the project.

III. Compensation

- A. CCHCD shall compensate OTSD for satisfactorily completing activities described in Section II.A. above.
- B. The total payment to OTSD shall not exceed \$50,000.00.
- C. OTSD shall submit a final invoice for reimbursement upon project completion. The request may use any format approved by CCHCD, but should list work accomplished for which reimbursement is requested and supporting documentation. Requests for reimbursement shall be submitted to:

Clackamas County Health Centers Division
Attn: Accounts Payable
2051 Kaen Road, # 367

INTERGOVERNMENTAL AGREEMENT
Oregon Trail School District No. 46 #8777
Page 2 of 4

Oregon City, Oregon 97045

or electronically to:

HealthCenterAP@clackamas.us

Within thirty (30) days after receipt of the bill, provided that the Program Manager, has approved the activities specified on the request for reimbursement, CCHCD shall pay the amount requested to the OTSD.

IV. Liaison Responsibility

*Jim Seipel, Facilities Director, will act as liaison from OTSD for this project.
Erin De Armond-Reid, Assistant Primary Care Manager, will act as liaison from CCHCD.*

V. Special Requirements

- A. CCHCD and OTSD agree to comply with all applicable local, state and federal ordinances, statutes, laws and regulations, including Oregon Public Contract laws and all applicable provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), PL 104-191, 45 CFR Parts 160-164, as well as all applicable provisions in each party's Intergovernmental Agreement with the Oregon Health Authority.
- B. Within the limits of the Oregon Tort Claims Act, OTSD agrees to protect and save CCHCD, its elected and appointed officials, agents, and employees while acting within the scope of their duties as such, harmless from and against all claims, demands, and causes of action of any kind or character, including the cost of defense thereof, arising against CCHCD's employees on account of personal injuries, death or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of OTSD, and/or its agents, employees, subcontractors, or representatives under this agreement.

Within the limits of the Oregon Tort Claims Act, and the Oregon Constitution Article XI, Section 10, CLACKAMAS agrees to protect and save OTSD, its elected and appointed officials, agents, and employees while acting within the scope of their duties as such, harmless from and against all claims, demands, and causes of action of any kind or character, including the cost of defense thereof, arising against CCHCD's employees on account of personal injuries, death or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of CCHCD, and/or its appointed officials, agents, employees, subcontractors, or representatives under this agreement.

- C. Access to Records. Each party to this agreement, as well as the State of Oregon and the Federal Government, and their duly authorized representatives shall have access to the books, documents, papers, and records of the other party to this agreement which are directly pertinent to the agreement for the purpose of making audit, examination, excerpts, and transcripts.
- D. This agreement 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 therefor. Any provisions herein that would conflict with law are deemed inoperative to that extent.

INTERGOVERNMENTAL AGREEMENT
Oregon Trail School District No. 46 #8777
Page 3 of 4

VI. Amendment

This agreement may be amended at any time with the concurrence of both parties. Any changes in the proposed budget or scope of work will be negotiated between the designated liaisons. Amendments become a part of this agreement only after the written amendment has been signed by both parties.

VII. Term of Agreement


This agreement becomes effective upon signature and is scheduled to terminate October 31, 2018.

This agreement is subject to termination by either of the parties when thirty (30) days' written notice has been provided.

This agreement consists of seven (7) sections plus the following Exhibits that by this reference are incorporated herein:

Exhibit A Projected Construction Schedule

OREGON TRAIL SCHOOL DISTRICT NO.46



Signature Authority Name
7-20-18

Date
86525 SE Industrial Way

Street Address
Sandy, OR 97055-0547

City / State / Zip
503-668-5541 / 503-668-7906

Phone / Fax

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

EXHIBIT A

Projected Construction Schedule

	7/9-7/13	7/16-7/20	7/23-7/27	7/30-8/3	8/6-8/10	8/13-8/17	8/20-8/24	8/27-8/31
Engage Design Professional (required for permit applications)	X X X X X							
Obtain permits		X X X X X						
Temporary reception area relocate	complete							
New office area ceiling demolition	complete							
Installation of walls and door		X X X X	X X X					
Replace Ceiling				X X				
HVAC alterations			X X	X X X X X				
Install new electrical outlets as needed			X X					
Install low voltage connections			X X					
Wall and floor finishes					X X X X			
Relocate reception area to completed space						X X		
Reconnect phone, data lines as needed						X X		
Final inspections and permit closeouts						X		

September 20, 2018

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Service Agreement with The Kroger Co. (Kroger), partnering
with Clackamas County Health Centers Division
in participation with 340B Pharmacy Services Agreement

Purpose/Outcomes	The intent of the Service Agreement is to facilitate Clackamas County Health Centers Division (CCHCD) participation in the 340B drug program.
Dollar Amount and Fiscal Impact	The Agreement has no maximum value as it will generate revenue for Clackamas County's Federally Qualified Health Center (FQHC). This will enter CCHCD and Kroger into a "ship to/bill to" arrangement wherein Kroger will dispense prescription drugs on behalf of CCHCD and then charge and collect fees for such drugs.
Funding Source	No County General Funds are involved. This is revenue generating through the 340B Drug Program.
Duration	Effective upon signature and terminates with the Third Party Drug Administrator Agreement (RxStrategies, 6/30/23).
Strategic Plan Alignment	1. Provide patient-centered health center services to vulnerable populations so they can experience improved health. 2. Ensure safe, health and secure communities
Previous Board Action	There has been no previous board action on this item.
Contact Person	Deborah Cockrell, FQHC Director – 503-742-5495
Contract No.	9021 & 9021_01

BACKGROUND:

The Clackamas County Health Centers Division (CCHCD) requests the approval of a Service Agreement and Memorandum of Understanding for the transition of the Third Party Administrator (TPA) of the 340B Program managed by CCHCD. The incumbent is NEC Networks, and it will be replaced with RxStrategies. The TPA manages the prescription drug virtual inventory of various pharmacies utilized by CCHCD. This agreement reflects the TPA change for the Kroger pharmacies and central-fill location. Participation in the 340B Drug Program allows the purchase of prescription drugs for CCHCD patients at favorable discounts from drug manufacturers. Selection of RxStrategies replacing NEC Networks was done through a competitive RFP that was

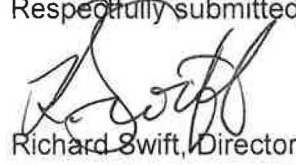
awarded on January 11, 2018. County Counsel reviewed and approved this agreement on September 10, 2018.

This Agreement is effective upon signature and continues through June 30, 2023, (termination of the Third Party Administrator Agreement, RxStrategies).

RECOMMENDATION:

Staff recommends the Board approval of this agreement and authorizes 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.

Richard Swift, Director
Health, Housing, and Human Services

PHARMACY SERVICE AGREEMENT

#9021

THIS AGREEMENT is made by and between County of Clackamas ("Covered Entity"), a Oregon Consolidated Health Center exempt from federal income tax, and, **The Kroger Co.** for itself and its affiliates and subsidiaries operating pharmacies listed in (hereinafter "Pharmacy") as of the date of the last dated signature on page 15.

WHEREAS, County of Clackamas is a "Covered Entity," specifically a "Consolidated Health Center" ("CH") as defined in Section 340B of the Public Health Service Act (hereinafter "Section 340B") and is eligible to purchase certain outpatient drugs at reduced prices for use by Eligible Patients, as defined in this Agreement, from drug manufacturers who have signed a drug purchasing agreement with the United States Department of Health and Human Services (hereinafter "DHHS") and/or the manufacturers' wholesalers;

WHEREAS, Covered Entity provides health care services to Eligible Patients at Exhibit A (the "Covered Entity Site");

WHEREAS, Covered Entity has engaged RxStrategies, Inc. ("RXS") to manage the pharmacy services and pharmacy relationship of the Covered Entity;

WHEREAS, the system, procedures and processes of RXS (past, current and future) remain the sole property of RXS and cannot be used by the Covered Entity and/or the Pharmacy independent of this agreement in perpetuity without the written consent of RXS,

WHEREAS, Pharmacy is duly licensed as a pharmacy in the State of Oregon and

WHEREAS, Covered Entity desires to engage Pharmacy to provide Pharmacy Services, as defined in this Agreement, to Eligible Patients on behalf of Eligible Patients with respect to outpatient drugs purchased pursuant to Section 340B.

NOW, THEREFORE, the parties agree as follows:

- 1) **Eligible Patients.** An individual will be considered an Eligible Patient under this Agreement if the following conditions are met:
 - a) Covered Entity has established a relationship with the individual, such that Covered Entity maintains records of the individual's health care;
 - b) The individual receives health care services from a health care professional who is either employed by Covered Entity or under contract with Covered Entity such that responsibility for the care remains with Covered Entity;
 - c) The individual receives a health care service or range of services from Covered Entity which is consistent with the service or range of services for which grant funding, listed in Section 340B, or Federally qualified health Covered Entity look-alike status has been granted Covered Entity; and

Initials: _____

Initials: _____

d) The individual receives health care services at the Covered Entity Site.

- i) An individual will not be considered an Eligible Patient if the only health care service provided by Covered Entity to the individual is the dispensing of a drug or drugs for subsequent self-administration or administration in the home setting. Notwithstanding the foregoing, individuals registered in a State operated or funded AIDS drug purchasing assistance program receiving financial assistance under Title XXVI of the Public Health Services Act are considered Eligible Patients.

2) **Covered Drugs.** The prescription outpatient drugs covered by this Agreement (hereinafter "Covered Drugs") are listed on Attachment A of this Agreement. The parties agree that Covered Entity may add or remove Covered Drugs from Attachment A at its sole discretion during the life of this Agreement. **Purchases, Shipment and Pricing of Drugs.**

- a) Pharmacy shall maintain sufficient supplies of such drugs to meet the day-to-day needs of Eligible Patients. Covered Entity will replenish Pharmacy's inventory for Covered Drugs dispensed to Eligible Patients for which payment under this Agreement was received by Pharmacy. Covered Entity shall arrange to be billed directly for Covered Drugs by the manufacturer/wholesaler(s), and arrange for shipment of such drugs (NDC-11 specific) directly to the Pharmacy on a schedule agreeable by Covered Entity and Pharmacy. Covered Entity shall establish all retail prices for Covered Drugs for all Eligible Patients as provided in Attachment A, which may be amended from time to time by Covered Entity.
- b) In order to facilitate the timeliness of the inventory replenishment process and ensure that drug replenishment is consistent with current and historical practices of the Pharmacy, Pharmacy shall provide, if requested by RXS, the following documentation and information to RXS upon execution of this Agreement:
- i) Identification of all pharmaceutical wholesalers;
- ii) Velocity reports for the most recent past three month period from all wholesalers;
- iii) List of inventory items by NDC ;
- iv) List of Pharmacy's third party payor processing information (typically BIN and PCN) and evidence of Medicaid and Medicare participation;
- v) Such other documentation and information as reasonably requested by RXS in support of the 340B program addressed in this agreement.
- c) If at the end of any 120 day period after a drug has been dispensed, the Covered Entity is unable to replenish the dispensed drug to the Pharmacy, the Covered Entity will reimburse the Pharmacy for the cost of the drug dispensed at WAC-3%.
- d) If at the end of any 120 day period after a drug has been determined to be over-replenished, the Covered Entity will provide a return authorization to the Pharmacy

Initials: _____

Initials: _____

- e) At the termination of the Agreement, the contract pharmacy must attest to the Covered Entity that all 340B drugs in inventory in excess of requirement ("Overstock") have been destroyed and therefore cannot be used in general commerce.
- 3) **Tracking System.** The parties to this Agreement understand that, pursuant to Section 340B, Covered Entity is liable to the manufacturer of Covered Drugs in an amount equal to the reduction in the price of Covered Drugs in the event that a discounted Covered Drug is sold or otherwise transferred to a person who is not an Eligible Patient. Pharmacy, with the assistance of Covered Entity and RXS, shall establish and maintain a tracking system suitable to prevent the diversion of Covered Drugs to individuals who are not Eligible Patients. Covered Entity will establish a process for periodic random (sample) comparison of its prescribing records with Pharmacy's dispensing records to detect potential irregularities. Said comparison will be conducted quarterly and comparison of purchasing and dispensing records will be performed every six months.
- a) Prescriptions retroactively identified for inclusion in the program by the random comparison process, outside of 60 days from the date of service require Pharmacy approval.
- b) Prescriptions, previously included, but retroactively identified for exclusion by the random comparison process, outside of 60 days from the date of service require a plan of action agreeable to the pharmacy, for the inventory deposition.
- 4) **Prescriptions.** Pharmacy shall dispense Covered Drugs only in the following circumstances:
- a) Upon presentation of a prescription form bearing an eligible prescriber's name, the Eligible Patient's name, or
- b) Upon receipt of a prescription ordered by telephone, facsimile or electronic transmission on behalf of an Eligible Patient by a legally qualified health care provider.
- c) Where appropriate, Covered Entity through RXS will furnish lists to Pharmacy of all eligible prescribers and will update the lists to reflect any changes.
- 5) **Pharmacy Services.** Pharmacy shall provide the following services:
- a) Dispensing Covered Drugs to Eligible Patients in accordance with all applicable State and Federal statutes and regulations and the professional judgement of the dispensing pharmacist;
- b) Participating in all pre- and post-adjudication programs as directed by Covered Entity or RXS as well as all data collection or auditing programs, plans and procedures as may be of assistance to Covered Entity or RXS in order to establish or verify costs, charges, reimbursement rates, billing, payments or receipts;
- c) Participating in third party payor arrangements in which the Covered Entity participates or which the Covered Entity may request. Pharmacy shall make all best efforts to enter into all such third party payor arrangements prior to the Commencement Date;
- d) Maintaining all records and reports (including without limitation, prescription files, velocity reports and records of ordering and receipt) required under this Agreement, Section 340B,

Initials: _____

Initials: _____

and by any applicable Federal and State law and regulations, which shall be separate from or readily retrievable from the Pharmacy's own operations and records, and shall be accessible with 15 day prior written request by Covered Entity, DHHS and the manufacturer/wholesaler in the case of audit. Such records shall be retained for not less than five years after the Pharmacy Services are rendered, and shall be available for inspection or audit by Covered Entity and as otherwise permitted by law and this Agreement;

- e) Conducting Eligible Patient drug utilization review;
 - f) Conducting formulary maintenance, including providing drug-related information services to Covered Entity clinical personnel, consulting with Covered Entity on the purchase of Covered Drugs, and identifying and disposing of Covered Drugs in its inventory which are out of date;
 - g) Maintaining Eligible Patient drug profiles;
 - h) Counseling and advising Eligible Patients consistent with the rules, limitations, and privileges incident to the pharmacy-patient relationship; and
 - i) Determining if a particular Eligible Patient is covered by a governmental or private insurance program, and if covered, will obtain the necessary authorization(s) or benefit payment for Covered Drugs.
- 6) **Relationship of the Parties.** Pharmacy is an independent contractor and shall be solely responsible for its acts and omissions regarding advice and services it is required to provide to Eligible Patients and Covered Entity. Pharmacy agrees to render all services provided under this Agreement in accordance with professional standards applicable to pharmacy services and in accordance with rules and regulations of the State Board of Pharmacy. Pharmacy shall have the right to refuse to serve any Eligible Patient where such service would violate any statute, regulations, or professional standards applicable to pharmacy services after making every attempt to resolve the outstanding issue with the prescriber. Pharmacy shall notify Covered Entity of any refusal of service within twenty-four (24) hours of such refusal.
- i) Pharmacy understands and acknowledges that RXS has been engaged by Covered Entity to manage pharmacy services and the relationship with Pharmacy. Accordingly, Pharmacy acknowledges that RXS is and will act as agent for Covered Entity. All obligations, duties, functions or tasks of Covered Entity as described herein may be carried out by RXS, as agent for Covered Entity. Unless advised to the contrary, Pharmacy shall provide all reports required hereunder to RXS, as agent for Covered Entity, and shall seek assistance from RXS, not Covered Entity, for all problems and issues regarding the services, duties and obligations hereunder.
- 7) **Pharmacy Site.** Pharmacy agrees it will provide Pharmacy Services contracted for under this Agreement at the sites listed in Exhibit B.
- 8) **Payment for Services.** Pharmacy shall be paid for Pharmacy Services in accordance with the terms provided on Attachment B to this Agreement. Covered Entity and Pharmacy have freely negotiated the terms of this Agreement and neither has offered or received any inducement or

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other consideration from the other party for entering into this Agreement. The compensation to be paid to Pharmacy is consistent with fair market value in arms-length transactions for Pharmacy Services and is not determined in a manner that takes into account the volume or value of any referrals or business otherwise generated between the parties for which payment may be made in whole or in part under a Federal or State health care program. Nothing in this Agreement shall be construed to require Covered Entity to make referrals of patients to Pharmacy.

- 9) **Patient Choice.** Pharmacy understands and agrees that Eligible Patients of Covered Entity may elect not to use Pharmacy for Pharmacy Services. In the event that an Eligible Patient elects not to use Pharmacy for such services, the patient may obtain the prescription from the prescriber and then obtain the drug(s) from the pharmacy provider of his or her choice.
- 10) **Quarterly Reports.** Based on the Pharmacy activity, RXS shall provide Covered Entity with quarterly financial statements, a detailed status report of collections, and a summary of receiving and dispensing records in a form satisfactory to Covered Entity. Pharmacy shall provide upon request by RXS any information that it might require to support or clarify such reports. The provisions of this Section 11 shall survive the expiration or termination of this Agreement for any reason.
- 11) **Prohibition on Resale or Transfer.** Pharmacy agrees that it will not resell or transfer a Covered Drug ordered under this Agreement pursuant to Section 340B to an individual who is not an Eligible Patient of Covered Entity. Upon presentation of complete and adequate documentation, Pharmacy further agrees that, in the event of transfer, diversion, or resale of a Covered Drug in violation of this Agreement, it will pay Covered Entity an amount equal to the price discount Covered Entity received from the manufacturer/wholesaler so that the Covered Entity can reimburse the manufacturer/wholesaler as provided in Section 4. For purposes of this provision, the Covered Entity's determination of the amount of the discount on a Covered Drug payable to the manufacturer shall be conclusive.
 - a) Covered Entity agrees that it will not resell or transfer a Covered Drug to an individual who is not an Eligible Patient.
- 12) **Anti-Kickback.** The Covered Entity and Pharmacy agree that their employees shall not offer or transfer remuneration to any individual eligible for benefits under federal or state health care programs (including Medicare and Medicaid).
- 13) **Fee for Service Medicaid (Medicaid FFS).** Unless specifically authorized by the State of Oregon, Medicaid FFS patients of the Covered Entity are not eligible for 340B Discount Prescription Program benefits.
- 14) **Audits.**
 - a) Pharmacy understands and agrees that both Pharmacy and Covered Entity are subject to audit by DHHS and by drug manufacturers who have signed a drug purchasing agreement with DHHS, which audits may pertain to the Covered Entity's compliance with the prohibition on drug resale or transfer and the prohibition on duplicate Medicaid rebates and discounts. Covered Entity shall notify Pharmacy immediately of any audit notice by DHHS or drug

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manufacturer. Pharmacy further understands that the DHHS has published proposed guidelines for such audits. Pharmacy agrees to cooperate with such audits and to comply with applicable provisions of the audit guidelines and amendments thereto that may be published from time to time.

- b) Pharmacy grants RXS the right, on behalf of Covered Entity, to audit its books and records, including all electronic records as it relates to the 340B program defined in this Agreement and consistent with HIPAA regulations, to verify and ensure compliance with the duties, obligations and transactions outlined hereunder. Pharmacy agrees to use its best efforts to cooperate with such audits in good faith.
- c) The provisions of this Section 13 shall survive the expiration or termination of this Agreement for any reason.

15) **Inspection by Manufacturer.** Pharmacy and Covered Entity understand and agree that a copy of this Pharmacy Services Agreement will be provided, upon request, to a drug manufacturer who has signed a purchasing agreement with DHHS and sells Covered Drugs to Covered Entity. In the event either party receives such a request, it shall immediately inform the other party and each party shall then have the opportunity to delete any information in this Agreement and attachments which it considers to be proprietary and confidential prior to submitting the Agreement to the requesting manufacturer. The provisions of this Section shall survive the expiration or termination of this Agreement for any reason.

16) **Insurance.** Pharmacy shall maintain during the term of this Agreement a policy of liability insurance with a responsible insurance carrier or an equivalent self-insurance plan in an amount not less than \$100,000 per incident and which includes the Covered Drugs in its coverage.

17) **Indemnification.** Pharmacy agrees to indemnify and hold Covered Entity and RXS harmless from any loss, damage or cost (including reasonable attorney fees) it may incur as a result of any wrongful acts or omission of Pharmacy with respect to this Agreement. Covered Entity agrees to indemnify and hold Pharmacy harmless from any loss, damage or cost (including reasonable attorney fees) it may incur as a result of any wrongful acts or omissions of Covered Entity with respect to this Agreement.

18) **Non-Assignment.** This Agreement may not be assigned by either party without the prior written agreement of the other party and RXS.

19) **Term and Termination.**

- a) This Agreement shall commence on or after November 9th, 2017 as follows (the "Commencement Date"), and shall continue in effect for three (3) years from the Commencement Date. Thereafter, this Agreement shall automatically renew for consecutive one (1) year periods until terminated as provided below. The Commencement Date of this Agreement for which claims can be processed shall be the first day upon which all the following have been completed: 1) Execution of the Agreement by both parties; 2) Registration of the Agreement by OPA; 3) Posting by OPA and the passing of the OPA effective date for the arrangement contemplated hereunder; 4) completion of wholesaler

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accounts; and 5) Pharmacy completing 340B training with the pharmacy staff for the location listed on Exhibit B.

b) This Agreement may be terminated as a result of any one of the following:

i) Mutual agreement of the parties;

ii) Sixty (60) days prior written notice by either party;

iii) Covered Entity, immediately and without prior notice, upon a material breach of this Agreement by Pharmacy. Without limiting Covered Entity's right to assert any other act or failure to act as constituting a material breach by Pharmacy, Pharmacy's dispensing of a Covered Drug to an individual who is not an Eligible Patient or any other diversion of a Covered Drug shall be deemed to be a material breach if not adequately cured within 30 days of written notice. Covered Entity's waiver or failure to take action with respect to Pharmacy's failure to comply with any term or provision of this Agreement shall not be deemed to be a waiver of Covered Entity's right to insist on future compliance with such term or provision.

iv) The Pharmacy reserves similar rights in 19)b)iii) as it relates to Covered Entity.

c) Any notice required to be given pursuant to the terms and provisions of this Agreement shall be in writing and shall be sent by certified or registered mail, return receipt requested, to the parties at the addresses set forth on the signature pages hereto. Notice shall be effective on the day it is mailed.

20) **Compliance with Laws.** The parties hereto shall comply with all applicable federal, state and local laws, rules, regulations and requirements. Covered Entity shall comply with all rules and regulations governing its Health Resources and Service Administration grant funding.

21) **Choice of Law.** This Agreement shall be interpreted according to the laws of the State of Oregon

22) **Representations of Pharmacy and Covered Entity where appropriate.** Pharmacy and Covered Entity represents that:

a) it employs, and will continue to employ throughout the term of this Agreement, sufficient qualified and credentialed personnel needed to manage and operate the Pharmacy and provide the services anticipated hereunder in a timely, professional, competent and ethical manner;

b) it owns, possesses and employs, and will continue to employ throughout the term of this Agreement, sufficient technology and equipment as needed to manage and operate the Pharmacy and provide the services in the manner anticipated hereunder;

c) it will render the Pharmacy services hereunder in accordance with prevailing pharmaceutical and medical standards that are applied the same fashion to all patients of Covered Entity;

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- d) it will render all Pharmacy services to Eligible Patients without regard to race, creed, color, age, sex, sexual orientation, citizenship, marital status, veteran status, national origin, disability, religion, arrest record or other protected status;
- e) it will not use drugs purchased under Section 340B to dispense Medicaid prescriptions, except as provided in an arrangement with the State Medicaid agency as approved by Covered Entity to prevent duplicate discounting;
- f) all of its employees, agents, representatives and members of its workforce, whose services may be used to fulfill obligations under this Agreement are or shall be appropriately informed of the terms of this Agreement and are under legal obligation to Pharmacy, by contract or otherwise, sufficient to enable Pharmacy to fully comply with all provisions of this Agreement including, without limitation, the requirement that modifications or limitations that Covered Entity has agreed to adhere to with regards to the use and disclosure of Protected Health Information of any individual that materially affects and/or limits the uses and disclosures that are otherwise permitted will be communicated to Pharmacy, in writing, and in a timely fashion;
- g) it will reasonably cooperate with Covered Entity in the performance of the mutual obligations under this Agreement;
- h) the execution and delivery of this Agreement and the performance of the duties obligations and transactions contemplated do not and will not contravene, conflict with or violate any agreement, commitment, plan or instrument binding on Pharmacy, including without limitation any participating provider agreement and any third party payor or pharmacy benefit management agreement; and
- i) Pharmacy, Covered Entity, nor its shareholders, members, directors, officers, agents, employees or members of its workforce performing duties directly related to this Agreement have been excluded or served a notice of exclusion or have been served with a notice of proposed exclusion, or have committed any acts which are cause for exclusion, from participation in, or had any sanctions, or civil or criminal penalties imposed under, any federal or state healthcare program, including but not limited to Medicare or Medicaid, or have been convicted, under federal or state law (including without limitation a plea of nolo contendere or participation in a first offender deterred adjudication or other arrangement whereby a judgment of conviction has been withheld), of a criminal offense related to (a) the neglect or abuse of a patient, (b) the delivery of an item or service, including the performance of management or administrative services related to the delivery of an item or service, under a federal or state healthcare program, (c) fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct in connection with the delivery of a healthcare item or service or with respect to any act or omission in any program operated by or financed in whole or in part by any federal, state or local government agency, (d) the unlawful, manufacture, distribution, prescription or dispensing of a controlled substance, or (e) interference with or obstruction of any investigation into any criminal offense described in (a) through (d) above. Each Party further agrees to notify the other Party immediately after the Party becomes aware that any of the foregoing representation and warranties may be

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inaccurate or may become incorrect and upon notice that the Party is being investigated in connection with any federal or state healthcare program.

23) **Confidentiality Compliance.**

a) Definitions:

- i) "Designated Record Set" shall have the meaning set out in its definition at 45 C.F.R. § 164.501, as such provision is currently drafted and as it is subsequently updated, amended, or revised.
- ii) "Health Care Operations" shall have the meaning set out in its definition at 45 C.F.R. § 164.501, as such provision is currently drafted and as it is subsequently updated, amended or revised.
- iii) "Privacy Officer" shall have the meaning as set out in its definition at 45 C.F.R. § 164.530(a) (1), as such provision is currently drafted and as it is subsequently updated, amended or revised.
- iv) "Protected Health Information" shall have the meaning as set out in its definition at 45 C.F.R. § 164.501, as such provision is currently drafted and as it is subsequently updated, amended or revised.

b) Pharmacy may:

- i) use the Protected Health Information in its possession for its proper management and administration and to fulfill any present or future legal responsibilities of Pharmacy provided that such uses are permitted under state and federal confidentiality laws.
- ii) disclose the Protected Health Information in its possession to third parties for the purpose of its proper management and administration or to fulfill any present or future legal responsibilities of Pharmacy, provided that Pharmacy represents to Covered Entity, in writing, that (i) the disclosures are required by law, as provided for in 45 C.F.R. § 164.501 or (ii) Pharmacy has received from the third party written assurances regarding its confidential handling of such Protected Health Information as required under 45 C.F.R. § 164.504(e)(4).
- iii) aggregate the Protected Health Information in its possession with the Protected Health Information of other covered entities that Pharmacy has in its possession through its capacity as a business associate to said other covered entities provided that the purpose of such aggregation is to provide Covered Entity with data analyses relating to the Health Care Operations of Covered Entity. Under no circumstances may Pharmacy disclose Protected Health Information of one covered entity to another covered entity absent the explicit authorization of Covered Entity.
- iv) de-identify any and all Protected Health Information provided that the de-identification conforms to the requirements of 45 C.F.R. § 164.514(b), and further provided that Covered Entity maintains the documentation required by 45 C.F.R. § 164.514(b) which

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may be in the form of a written assurance from Pharmacy. Pursuant to 45 C.F.R. § 164.502(d)(2), de-identified information does not constitute Protected Health Information and is not subject to the terms of this Agreement.

- c) Responsibilities of Pharmacy with respect to Protected Health Information. With regard to its use and/or disclosure of Protected Health Information, Pharmacy hereby agrees to do the following:
- i) use and/or disclose the Protected Health Information only as permitted or required by this Agreement or as otherwise required by law.
 - ii) report to the designated Privacy Officer of Covered Entity, in writing, any use and/or disclosure of the Protected Health Information that is not permitted or required by this Agreement of which Pharmacy becomes aware within 5 business days of Pharmacy discovery of such unauthorized use and/or disclosure.
 - iii) establish procedures for mitigating, to the greatest extent possible, any deleterious effects from any improper use and/or disclosure of Protected Health Information that Pharmacy reports to Covered Entity.
 - iv) use commercially reasonable efforts to maintain the security of the Protected Health Information and to prevent unauthorized use and/or disclosure of such Protected Health Information.
 - v) require all of its subcontractors and agents that receive or use, or have access to, Protected Health Information under this Agreement to agree, in writing, to adhere to the same restrictions and conditions on the use and/or disclosure of Protected Health Information that apply to Pharmacy pursuant to this Agreement.
 - vi) make available all records, books, agreements, policies and procedures relating to the use and/or disclosure of Protected Health Information to the Secretary of the Department of Health and Human Services for purposes of determining Covered Entity's compliance with the Privacy Regulation, subject to attorney-client and other applicable legal privileges.
 - vii) upon prior written request, make available during normal business hours at Pharmacy offices all records, books, agreements, policies and procedures relating to the use and/or disclosure of Protected Health Information to Covered Entity within 10 business days for purposes of enabling Covered Entity to determine Pharmacy compliance with the terms of this Agreement.
 - viii) within 45 days of receiving a written request from Covered Entity, provide to Covered Entity such information as is requested by Covered Entity to permit Covered Entity to respond to a request by an individual for an accounting of the disclosures of the individual's Protected Health Information in accordance with 45 C.F.R. § 164.528.
 - ix) except as required by state or federal law, return to Covered Entity or destroy, within 5 business days of the termination of this Agreement, the Protected Health Information in

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its possession and retain no copies (which for purposes of this Agreement shall mean destroy all backup tapes).

- x) disclose to its subcontractors, agents or other third parties, and request from Covered Entity, only the minimum Protected Health Information necessary to perform or fulfill a specific function required or permitted hereunder.
- d) Responsibilities of Covered Entity with respect to Protected Health Information. With regard to the use and/or disclosure of Protected Health Information by Pharmacy, Covered Entity hereby agrees:
 - i) to inform Pharmacy of any changes in the form of notice of privacy practices (the "Notice") that Covered Entity provides to individuals pursuant to 45 C.F.R. §164.520, and to provide Pharmacy a copy of the Notice currently in use.
 - ii) to inform Pharmacy of any changes in, or withdrawal of, the consent or authorization provided to Covered Entity by individuals pursuant to 45 C.F.R. §164.506 or §164.508.
 - iii) to inform Pharmacy of any opt-outs exercised by any individual from marketing and/or fundraising activities of Covered Entity pursuant to 45 C.F.R. § 164.514(e) and (f).
 - iv) to notify Pharmacy, in writing and in a timely manner, of any arrangements permitted or required of Covered Entity under 45 C.F.R. Parts 160 and 164 that may impact in any manner the use and/or disclosure of Protected Health Information by Pharmacy under this Agreement, including, but not limited to, restrictions on use and/or disclosure of Protected Health Information as provided for in 45 C.F.R. § 164.522 agreed to by Covered Entity.
 - v) that Pharmacy may make any use and/or disclosure of Protected Health Information permitted under 45 C.F.R. § 164.512 except uses or disclosure for research is not permitted without prior approval by Covered Entity.
- e) Survival of Obligations. The rights and obligations set forth in this Section 23 shall survive the termination of this Agreement.

24) Non-disclosure/Non-solicitation.

- a) Non-disclosure. In the course of performing under this Agreement, Pharmacy may receive, be exposed to or acquire Confidential Information including but not limited to, all information, data, reports, records, summaries, tables and studies, whether written or oral, fixed in hard copy or contained in any computer data base or computer readable form, as well as any information identified as confidential of the Covered Entity or RXS ("Confidential Information"). Without limiting the foregoing, Pharmacy acknowledges and agrees that this Agreement, including the pricing terms of this Agreement, constitutes Confidential Information. For purposes of this Agreement, Confidential Information shall not include Protected Health Information, the security of which is the subject of this Agreement and is provided for elsewhere. Pharmacy including its employees, agents or representatives (i) shall not disclose to any third party the Confidential Information except as otherwise permitted by

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this Agreement, (ii) only permit use of such Confidential Information by employees, agents and representatives having a need to know in connection with performance under this Agreement, and (iii) advise each of their employees, agents, and representatives of their obligations to keep such Confidential Information confidential. Notwithstanding anything to the contrary herein, each Party shall be free to use, for its own business purposes, any ideas, suggestions, concepts, know-how or techniques contained in information received from each other that directly relates to the performance under this Agreement. This provision shall not apply to Confidential Information: (1) after it becomes publicly available through no fault of either Party; (2) which is later publicly released by either Party in writing; (3) which is lawfully obtained from third parties without restriction; or (4) which can be shown to be previously known or developed by either Party independently of the other Party.

b) Non-solicitation. During the term of this Agreement and for one (1) year after the termination thereof the Pharmacy, Covered Entity and RXS will not knowingly hire, seek to hire or assist in hiring any employee, agent or independent contractor of Pharmacy, Covered Entity or of RXS or induce or seek to induce or take action which results in the termination of employment or other arrangements between Pharmacy, Covered Entity or RXS, and such employee, agent or independent contractor or otherwise interferes with such employment or contractual arrangements, without the consent of all parties involved.

25) Enforcement. Pharmacy acknowledges and agrees that any breach by it of any of the provisions of Sections 23(a) or 23(b) (the "Restrictive Covenants") would result in irreparable injury and damage for which money damages would not provide an adequate remedy. Therefore, if the Pharmacy breaches, or threatens to commit a breach of, any of the Restrictive Covenants, Covered Entity shall have the right and remedy (upon compliance with any necessary prerequisites imposed by law upon the availability of such remedy), which shall be independent and severally enforceable, and which shall be in addition to, and not in lieu of, any other rights and remedies available to Covered Entity under law or in equity (including, without limitation, the recovery of damages), to have the Restrictive Covenants specifically enforced (without posting bond and without the need to prove damages) by any court having equity jurisdiction, including, without limitation, the right to an entry against Pharmacy of restraining orders and injunctions (preliminary, mandatory, temporary and permanent), without posting bond and without the need to prove damages, against violations, threatened or actual, and whether or not then continuing, of such covenants. The existence of any claim or cause of action by Pharmacy, whether predicated on this Agreement or otherwise, shall not constitute a defense to the enforcement of the Restrictive Covenants. In addition, any breach of the Restrictive Covenants shall constitute a material breach of this Agreement.

26) Transactional Data. Covered Entity will be responsible to pay any and all switch fees associated with the provision of claims data required to verify 340B eligibility. Pharmacy agrees that upon termination of the arrangement between Pharmacy and Covered Entity for any reason, Pharmacy is responsible for notifying the switch company to terminate data feeds. Covered Entity agrees to pay for any fees associated with this termination.

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- 27) Federal Contractor Status. The parties hereto understand and acknowledge the Pharmacy is not a federal contractor or subcontractor and does not wish to become such. Covered Entity represents and warrants that it is not a federal contractor or subcontractor and is not under the jurisdiction of the Office of Federal Contract Compliance Programs ("OFCCP"). Covered Entity further represents and warrants that this Agreement is not a federal contractor subcontract and that there is no underlying agreement that could bring this Agreement, the arrangement hereunder, or the parties here-to-within the jurisdiction of OFCCP. Covered Entity shall indemnify, defend and hold Pharmacy harmless from any and all liability, loss, claim, lawsuit, damage or expense whatsoever (including reasonable attorney's fees) arising out of, incident to or in any manner occasioned by Covered Entity's breach of representations and warranties set forth in this Section 27. Pharmacy may terminate the Agreement immediately, if it reasonably determines in its sole discretion that this Agreement is, or is likely to be, a federal contract or subcontract.

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- 28) **Entire Agreement.** This Agreement represents the entire understanding of the parties. There are no other agreements or understandings between the parties, either oral or written, relating to Covered Drugs. Any amendments to this Agreement shall be in writing and signed by both parties

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above written.

The Kroger Co.

By: _____

Name: _____

Its: _____

Date: _____

County of Clackamas

By: _____

Name: Richard Swift

Its: Director

Date: _____

Initials: _____

Initials: _____

EXHIBIT A

Listing of All Covered Entity Sites Served By the Pharmacy

All current and future sites linked to the main site and as listed on the Office of Pharmacy Affairs (website: <http://opanet.hrsa.gov/opa/CE/CEExtract.aspx>) as owned, operated or contracted by or to Covered Entity. The current main listing is:

County of Clackamas

2051 Kaen Road

Suite 367

Oregon City, OR 97045

340B ID: CH101310

Initials: _____

Initials: _____

September 20, 2018

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Local Grant Agreement with Clackamas Women's Services
for Evidence-based Parenting Education Classes

Purpose/Outcomes	Provide parenting education classes, enhance teaching skills and competencies of parents to promote child social/emotional well-being and pre-literacy and pre-numeracy skills
Dollar Amount and Fiscal Impact	Agreement has a maximum value of \$9,499. No match is involved
Funding Source	Oregon Community Foundation
Duration	Effective August 1, 2018 and terminates on June 30, 2019
Previous Board Action	N/A
Strategic Plan Alignment	1. Individuals and families in need are healthy and safe 2. Ensure safe, healthy and secure communities
Contact Person	Rodney A. Cook 503-650-5677
Contract No.	CYF 8972

BACKGROUND:

The Children, Youth & Families Division of the Health, Housing and Human Services Department requests the approval of a Local Grant Agreement with Clackamas Women's Service to provide parent education and skills training to a minimum of 20 parents. Classes will improve the quality of parent/child interaction and support healthy child development. Services are paid on a cost reimbursement basis.

This Agreement has a maximum value of \$9,499. No County General funds are involved and no match is required. It is effective August 1, 2018 and terminates June 30, 2019. It has been reviewed and approved by County Counsel.

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,



Richard Swift, Director
Health, Housing & Human Services

Healthy Families. Strong Communities.

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

CLACKAMAS COUNTY, OREGON
LOCAL SUBRECIPIENT GRANT AGREEMENT CYF-8972

Program Name: **Clackamas Women's Services OPEC Parenting Education**

Program/Project Number: CYF-8972

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

COUNTY Data

Grant Accountant: Larry Crumbaker

Clackamas County Finance
2051 Kaen Rd.
Oregon City, OR 97045
503-742-5429
larrycrum@clackamas.us

Program Coordinator: Chelsea Hamilton

Clackamas County Children, Youth & Families Division
150 Beavercreek Rd.
Oregon City, OR 97045
503-650-5682
chamilton@clackamas.us

SUBRECIPIENT Data

Finance/Fiscal Representative: Carla Batcheller

Clackamas Women's Services
256 Warner Milne Road
Oregon City, OR 97045
503-557- 5801
carlab@cwsor.org
FEIN: 93-0900119

Program Representative: Melissa Erlbaum

Clackamas Women's Services
256 Warner Milne Road
Oregon City, OR 97045
503-557-5810
melissae@cwsor.org

RECITALS

1. Clackamas Women's Service (SUBRECIPIENT), a local Nonprofit 501(c)(3) organization, was chosen by CYF through a competitive process to provide parenting classes to parents with children up to to age six to increase parenting skills and knowledge of healthy child development and to promote early learning and readiness for kindergarten. SUBRECIPIENT enhances access to this service across the county and has demonstrated capacity to deliver evidence-based parenting programs.
2. SUBRECIPIENT will conduct one English and one Spanish class series of Make Parenting A Pleasure (total of 10 sessions each series), with a minimum of 10 unduplicated parents each series. Parents will expand their knowledge about child development, build effective parenting skills, and strengthen parent-child relationships – resulting in enhanced children's health, development, and school readiness.
3. The Oregon Community Foundation – Oregon Parenting Education Collaborative (OPEC), which funds this Agreement, is a multi-year initiative to expand access to high-quality parenting programs and develop a stronger and more coordinated parenting education system in order to reach Clackamas County parents with young children, and especially those who are English language learners, low income, living in rural communities, and/or are otherwise traditionally underserved, lack adequate access to evidence-based parenting education.
4. This 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 Local Subrecipient 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 August 1, 2018 and not later than June 30, 2019, 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: SUBRECIPIENT Statement of Program Objectives. 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 of the Oregon Community Foundation – Oregon Parenting Education Collaborative Grant Agreement that is the source of the grant funding.
4. **Grant Funds.** The COUNTY's funding for this Agreement is the Oregon Parenting Education Collaborative issued to the COUNTY by the Oregon Community Foundation. The maximum, not to exceed, grant amount that the COUNTY will pay on this Agreement is **\$9,500**.
5. **Disbursements.** This is a cost reimbursement grant and disbursements will be made monthly in accordance with the requirements contained in Exhibit D: Request for Reimbursement.

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 the 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. If the maximum compensation amount is increased by amendment, the amendment must be fully effective 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. This notice may be transmitted in person, by mail, facsimile, or by email, with confirming record of delivery confirmation through electronic mail return-receipt, or by confirmation that the electronic mail was accessed, downloaded, or printed.
8. **Funds Available and Authorized.** The COUNTY certifies that it has been awarded funds sufficient to finance the costs of this Agreement. SUBRECIPIENT understands and agrees that payment of amounts under this Agreement is contingent on the COUNTY receiving appropriations or other expenditure authority sufficient to allow the COUNTY, in the exercise of its reasonable 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) **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 the COUNTY. At no time may budget modifications change the scope of the original grant application or Agreement.
- d) **Allowable Uses of Funds.** SUBRECIPIENT shall use funds only for those purposes authorized in this Agreement and in accordance with Oregon Community Foundation Oregon Parenting Education Collaborative.
- e) **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.
- f) **Match.** Matching funds are not required for this Agreement.
- g) **Payment.** Routine requests for reimbursement should be submitted monthly by the 15th of the following month using the form and instructions in Exhibit D: Request for Reimbursement. SUBRECIPIENT must submit a final request for payment no later than fifteen (15) days after the end date of this Agreement.
- h) **Performance and Financial Reporting.** SUBRECIPIENT must submit Performance Reports according to the schedule specified in Exhibit C: SUBRECIPIENT Performance Reporting. SUBRECIPIENT must submit Financial Reports according to the schedule specified in Exhibit D: Request for Reimbursement. All reports must be submitted on the templates provided and be signed and dated by an authorized official of SUBRECIPIENT.
- i) **Audit.** SUBRECIPIENT shall comply with the audit requirements prescribed by State and Federal law.
- j) **Monitoring.** SUBRECIPIENT agrees to allow access to conduct site visits and inspections of financial and programmatic records for the purpose of monitoring. COUNTY, the Oregon Community Foundation, and their duly authorized representatives shall have access to such 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, copies and transcripts. Monitoring may be performed onsite or offsite, at the COUNTY's discretion.
- k) **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 six (6) years following the Project End Date (June 30, 2019), 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.

- l) **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 the 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.

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- 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.
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- a) **Indemnification.** SUBRECIPIENT agrees to indemnify and hold COUNTY, its elected officials, officers, employees and agents harmless with respect to any claim, cause, damage, action, penalty or other cost (including 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 elected officials, officers, employees and agents. This coverage shall include Contractual Liability insurance for the indemnity provided under this Agreement. The policy(ies) 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 Liability.** If the Agreement involves the use of vehicles, SUBRECIPIENT 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.
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- 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 required insurance, other than Professional Liability, Workers' Compensation, and Personal Automobile Liability and Pollution Liability Insurance, shall include "Clackamas County, its elected officials, officers, employees and agents" as an additional insured, but only with respect to SUBRECIPIENT's activities under this Agreement.
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- 7) **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.
- 8) **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.
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- 10) **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.
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- d) **Independent Status.** SUBRECIPIENT is independent of the COUNTY and will be responsible for any federal, state, or local taxes and fees applicable to payments hereunder. SUBRECIPIENT is not an agent of the COUNTY and undertakes this work independent from the control and direction of the COUNTY excepting as set forth herein. SUBRECIPIENT shall not seek or have the power to bind the 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 the 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.
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- 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)

SIGNATURE PAGE TO SUBRECIPIENT AGREEMENT

(CLACKAMAS COUNTY)

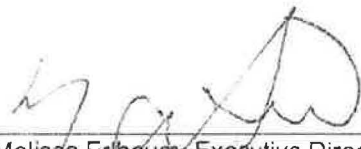
AGREED as of the Effective Date.

SUBRECIPIENT

Clackamas Women's Services
256 Warner Milne Road
Oregon City, OR 97045

CLACKAMAS COUNTY

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

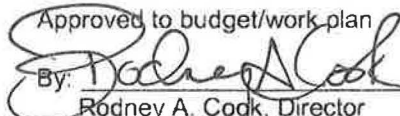
By: 
Melissa Erlbaum, Executive Director

Dated: 8-27-2018

Signing on behalf of the Board:

By: _____
Richard Swift, Director
Health, Housing & Human Services

Dated: _____

Approved to budget/work plan
By: 
Rodney A. Cook, Director
Children, Youth & Families Division

Dated: 8/27/18

- Exhibit A-1: Scope of Work
- Exhibit A-2: Work Plan Quarterly Report
- Exhibit A-3: Demographic Report
- Exhibit A-4: Client Feedback Survey and Report
- Exhibit B: Program Budget
- Exhibit C: Performance Reporting Schedule
- Exhibit D-1: Request for Reimbursement
- Exhibit D-2: Monthly Activity Report

September 20, 2018

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Local Grant Agreement with Clackamas County Children's Commission
for Evidence-based Parenting Education Classes

Purpose/Outcomes	Provide parenting education classes, enhance teaching skills and competencies of parents to promote child social/emotional well-being and pre-literacy and pre-numeracy skills
Dollar Amount and Fiscal Impact	Agreement has a maximum value of \$9,500. No match is involved
Funding Source	Oregon Community Foundation. No County General Funds are involved.
Duration	Effective August 1, 2018 and terminates on June 30, 2019
Previous Board Action	N/A
Strategic Plan Alignment	1. Individuals and families in need are healthy and safe 2. Ensure safe, healthy and secure communities
Contact Person	Rodney A. Cook 503-650-5677
Contract No.	CYF 8971

BACKGROUND:

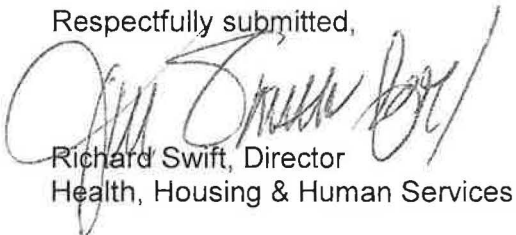
The Children, Youth & Families Division of the Health, Housing and Human Services Department requests the approval of a Local Grant Agreement with Clackamas County Children's Commission to provide parent education and skills training to a minimum of 30 parents. Classes will improve the quality of parent/child interaction and support healthy child development. Services are paid on a cost reimbursement basis.

This Agreement has a maximum value of \$9,500. No County General funds are involved and no match is required. It is effective August 1, 2018 and terminates June 30, 2019. It have been reviewed and approved by County Counsel.

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,


Richard Swift, Director
Health, Housing & Human Services

Healthy Families. Strong Communities.

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

www.clackamas.us

CLACKAMAS COUNTY, OREGON LOCAL SUBRECIPIENT GRANT AGREEMENT CYF-8971	
Program Name: Clackamas County Children's Commission Head Start (CCCCHS) OPEC Parenting Education Program/Project Number: CYF-8971	
This Agreement is between Clackamas County, Oregon , acting by and through its Health, Housing & Human Services Children, Youth & Families Division (COUNTY) and Clackamas County Children's Commission-Head Start (CCCCHS) (SUBRECIPIENT), an Oregon Non-profit Organization.	
COUNTY Data	
Grant Accountant: Larry Crumbaker	Program Coordinator: Chelsea Hamilton
Clackamas County Finance 2051 Kaen Rd. Oregon City, OR 97045 503-742-5429 mmorasko@clackamas.us	Clackamas County Children, Youth & Families Division 150 Beavercreek Rd. Oregon City, OR 97045 503-650-5682 chamilton@clackamas.us
SUBRECIPIENT Data	
Finance/Fiscal Representative: Doug Kohnke	Program Representative: Linda Dorzweiler
Clackamas County Children's Commission 16518 SE River Road Milwaukie, OR 97267 503.675.4565 dougk@cccchs.org	Clackamas County Children's Commission 16518 SE River Road Milwaukie, OR 97267 503.675.4565 lindad@cccchs.org
FEIN: 93-0624672	

RECITALS

1. Clackamas County Children's Commission Head Start (SUBRECIPIENT), a local Nonprofit 501(c)(3) organization, was selected through a competitive process to provide parenting classes to parents with children (prenatal to age six) to increase parenting skills and knowledge of healthy child development and to promote early learning and readiness for kindergarten. SUBRECIPIENT enhances access to this service across the county and has demonstrated capacity to deliver evidence-based parenting programs.
2. SUBRECIPIENT will conduct two English class series of Circle of Security and 1 Spanish class series of Abriendo Puertas with a minimum of 10 unduplicated parents each series (total of 30 parents). Parents will expand their knowledge about child development, build effective parenting skills, and strengthen parent-child relationships – resulting in enhanced children's health, development, and school readiness.
3. The Oregon Community Foundation – Oregon Parenting Education Collaborative (OPEC), which funds this Agreement, is a multi-year initiative to expand access to high-quality parenting programs and develop a stronger and more coordinated parenting education system in order to reach Clackamas County parents with young children, and especially those who are English language learners, low income, living in rural communities, and/or are otherwise traditionally underserved, lack adequate access to evidence-based parenting education.
4. This 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 Local Subrecipient 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 August 1, 2018 and not later than June 30, 2019, 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: SUBRECIPIENT Statement of Program Objectives. 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 of the Oregon Community Foundation – Oregon Parenting Education Collaborative Grant Agreement that is the source of the grant funding.
4. **Grant Funds.** The COUNTY's funding for this Agreement is the Oregon Parenting Education Collaborative issued to the COUNTY by the Oregon Community Foundation. The maximum, not to exceed, grant amount that the COUNTY will pay on this Agreement is **\$9,500**.
5. **Disbursements.** This is a cost reimbursement grant and disbursements will be made monthly in accordance with the requirements contained in Exhibit D: Request for Reimbursement.

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 the 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. If the maximum compensation amount is increased by amendment, the amendment must be fully effective 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. This notice may be transmitted in person, by mail, facsimile, or by email, with confirming record of delivery confirmation through electronic mail return-receipt, or by confirmation that the electronic mail was accessed, downloaded, or printed.
8. **Funds Available and Authorized.** The COUNTY certifies that it has been awarded funds sufficient to finance the costs of this Agreement. SUBRECIPIENT understands and agrees that payment of amounts under this Agreement is contingent on the COUNTY receiving appropriations or other expenditure authority sufficient to allow the COUNTY, in the exercise of its reasonable 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) **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 the COUNTY. At no time may budget modifications change the scope of the original grant application or Agreement.
- d) **Allowable Uses of Funds.** SUBRECIPIENT shall use funds only for those purposes authorized in this Agreement and in accordance with Oregon Community Foundation Oregon Parenting Education Collaborative.
- e) **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.
- f) **Match.** Matching funds are not required for this Agreement.
- g) **Payment.** Routine requests for reimbursement should be submitted monthly by the 15th of the following month using the form and instructions in Exhibit D: Request for Reimbursement. SUBRECIPIENT must submit a final request for payment no later than fifteen (15) days after the end date of this Agreement.
- h) **Performance and Financial Reporting.** SUBRECIPIENT must submit Performance Reports according to the schedule specified in Exhibit C: SUBRECIPIENT Performance Reporting. SUBRECIPIENT must submit Financial Reports according to the schedule specified in Exhibit D: Request for Reimbursement. All reports must be submitted on the templates provided and be signed and dated by an authorized official of SUBRECIPIENT.
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(Signature Page Attached)

SIGNATURE PAGE TO SUBRECIPIENT AGREEMENT

(CLACKAMAS COUNTY)

AGREED as of the Effective Date.

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: Sue Elder
Sue Elder, Executive Director

Dated: 8/16/18

Signing on behalf of the Board:

By: _____
Richard Swift, Director
Health, Housing & Human Services

Dated: _____

Approved to budget/work plan

By: Rodney A. Cook
Rodney A. Cook, Director
Children, Youth & Families Division

Dated: 8/27/18

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- Exhibit A-4: Client Feedback Survey and Report
- Exhibit B: Program Budget
- Exhibit C: Performance Reporting Schedule
- Exhibit D-1: Request for Reimbursement
- Exhibit D-2: Monthly Activity Report

September 20, 2018

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Local Grant Agreement with Todos Juntos
for Evidence-based Parenting Education Classes

Purpose/Outcomes	Provide parenting education classes, enhance teaching skills and competencies of parents to promote child social/emotional well-being and pre-literacy and pre-numeracy skills
Dollar Amount and Fiscal Impact	Agreement has a maximum value of \$13,744. No match is involved
Funding Source	Oregon Community Foundation. No County general funds are involved.
Duration	Effective August 1, 2018 and terminates on June 30, 2019
Previous Board Action	N/A
Strategic Plan Alignment	1. Individuals and families in need are healthy and safe 2. Ensure safe, healthy and secure communities
Contact Person	Rodney A. Cook 503-650-5677
Contract No.	CYF 8970

BACKGROUND:

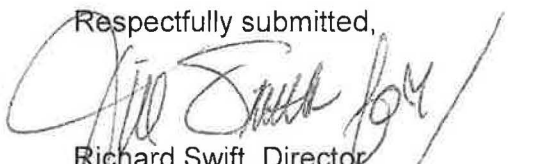
The Children, Youth & Families Division of the Health, Housing and Human Services Department requests the approval of a Local Grant Agreement with Todos Juntos to provide parent education and skills training to a minimum of 30 parents. Classes will improve the quality of parent/child interaction and support healthy child development. Services are paid on a cost reimbursement basis.

This Agreement has a maximum value of \$13,744. No County General funds are involved and no match is required. It is effective August 1, 2018 and terminates June 30, 2019. It have been reviewed and approved by County Counsel.

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,


Richard Swift, Director
Health, Housing & Human Services

<p align="center">CLACKAMAS COUNTY, OREGON LOCAL SUBRECIPIENT GRANT AGREEMENT CYF-8970</p>	
<p>Program Name: <i>Todos Juntos OPEC Parent Education Classes</i> Program/Project Number: CYF-8970</p>	
<p align="center">This Agreement is between <u>Clackamas County, Oregon</u>, acting by and through its Health, Housing & Human Services Children, Youth & Families Division (COUNTY) and <u>Todos Juntos</u> (SUBRECIPIENT), an Oregon Non-profit Organization.</p>	
<p>COUNTY Data</p>	
Grant Accountant: Larry Crumbaker	Program Coordinator: Chelsea Hamilton
Clackamas County Finance 2051 Kaen Road Oregon City, OR 97045 503-742-5429 larrycrum@clackamas.us	Clackamas County Children, Youth & Families Division 150 Beaver Creek Rd. Oregon City, OR 97045 503-650-5682 chamilton@clackamas.us
<p>SUBRECIPIENT Data</p>	
Finance/Fiscal Representative: Eric Johnston	Program Representative: Shawna Johnson
Todos Juntos PO Box 645 Canby, OR 97013 503.544.1513 ejtodosjuntos@comcast.net	Todos Juntos PO Box 645 Canby, OR 97013 503- 341-3381 shawnaj@todos-juntos.net
FEIN: 93-1308023	

RECITALS

1. Todos Juntos will conduct one Spanish and one English class series of *Make Parenting a Pleasure* with a minimum of 20 unduplicated parents (10 English and 10 Spanish speakers), and one English series of *Parenting Now* with a minimum of 10 parents by June 30, 2019. Parents will expand their knowledge about child development, build effective parenting skills, and strengthen parent-child relationships – resulting in enhanced children's health, development, and school readiness.

Todos Juntos, a local Nonprofit 501(c)(3) organization, was chosen by CYF through a competitive process to provide parenting classes to parents with children prenatal to age six. Todos Juntos has a reputation throughout the rural community for providing evidence-based parenting programs and support services.

2. 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 Local Grant Agreement, the COUNTY and SUBRECIPIENT agree as follows:

AGREEMENT

1. **Term and Effective Date.** This Agreement shall be effective as of August 1, 2018 and shall expire on June 30, 2019, 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 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 of The Oregon Community Foundation Grant Agreement that is the source of the grant funding
4. **Grant Funds.** The COUNTY's funding for this Agreement is the OPEC Parenting Education Collaborative Hub issued to the COUNTY by The Oregon Community Foundation. The maximum, not to exceed, grant amount that the COUNTY will pay is **\$13,744.**
5. **Disbursements.** This is a cost reimbursement grant and disbursements will be made monthly in accordance with the requirements contained in Exhibit D: Request for Reimbursement. 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 the 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. If the maximum compensation amount is increased by amendment, the amendment must be fully effective 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. This notice may be transmitted in person, by mail, facsimile, or by email, with confirming record of delivery confirmation through electronic mail return-receipt, or by confirmation that the electronic mail was accessed, downloaded, or printed.
8. **Funds Available and Authorized.** The COUNTY certifies that it has been awarded funds sufficient to finance the costs of this Agreement. SUBRECIPIENT understands and agrees that payment of amounts under this Agreement is contingent on the COUNTY receiving appropriations or other expenditure authority sufficient to allow the COUNTY, in the exercise of its reasonable 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) **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 the COUNTY. At no time may budget modifications change the scope of the original grant application or agreement.

- d) **Allowable Uses of Funds.** SUBRECIPIENT shall use funds only for those purposes authorized in this Agreement and in accordance with provisions as set forth by The Oregon Community Foundation as follows:
- Delivery of best practice parenting education programs, with a focus on programs for parents with children prenatal to age six, through home visiting and/or group based classes. Eligible costs include facilitator preparation and delivery time; food, incentives, and/or child care for participants; and transportation for participants, as appropriate.
 - Coordination and administration costs, including activities to establish and/or expand the Hub organization; convene partners to discuss and develop the region's parenting education framework, plan and set priorities; develop or improve the region's parenting education framework; and develop or improve access to information about available programs.
 - Facilitator training and supervision.
 - Purchase of curriculum and other materials.
 - Public awareness activities and materials.
- e) **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.
- f) **Match.** Matching funds are not required for this Agreement
- g) **Payment.** Routine requests for reimbursement should be submitted monthly by the 15th of the following month using the form and instructions in Exhibit D: Request for Reimbursement. SUBRECIPIENT must submit a final request for payment no later than fifteen (15) days after the end date of this Agreement.
- h) **Performance and Financial Reporting.** SUBRECIPIENT must submit Performance Reports according to the schedule specified in Exhibit C: SUBRECIPIENT Performance Reporting. SUBRECIPIENT must submit Financial Reports according to the schedule specified in Exhibit D: Request for Reimbursement. All reports must be submitted on SUBRECIPIENT letterhead, must reference this agreement number, and be signed and dated by an authorized official of SUBRECIPIENT.
- i) **Lobbying.** Not applicable to this grant.
- j) **Audit.** Not applicable to this grant.
- k) **Monitoring.** SUBRECIPIENT agrees to allow access to conduct site visits and inspections of financial and programmatic records for the purpose of monitoring. COUNTY, the Oregon Community Foundation, the Secretary of the State of Oregon, and their duly authorized representatives shall have access to such 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, copies and transcripts. Monitoring may be performed onsite or offsite, at the COUNTY's discretion.
- l) **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 six (6) years following the Project End Date (June 30, 2019), 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.

- m) **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 the 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.

12. General Agreement Provisions.

- a) **Indemnification.** SUBRECIPIENT agrees to indemnify and hold COUNTY, its elected officials, officers, and employees and agents harmless with respect to any claim, cause, damage, action, penalty or other cost 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 the COUNTY. Any

insurance or self-insurance maintained by COUNTY shall be excess and shall not contribute to it.

- 2) **Commercial Automobile Liability.** If the Agreement involves the use of vehicles, SUBRECIPIENT 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 the 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 the 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 required insurance, other than Professional Liability, Workers' Compensation, and Personal Automobile Liability and Pollution Liability Insurance, shall include "Clackamas County, its agents, officers, and employees" as an additional insured.
- 6) **Minors.** Not applicable to this grant.
- 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 the 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 without the express written approval of the COUNTY.
- d) **Independent Status.** SUBRECIPIENT is independent of the COUNTY and will be responsible for any federal, state, or local taxes and fees applicable to payments hereunder. SUBRECIPIENT is not an agent of the COUNTY and undertakes this work independent from the control and direction of the COUNTY excepting as set forth herein. SUBRECIPIENT shall not seek or have the power to bind the 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 the 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)

SIGNATURE PAGE TO SUBRECIPIENT AGREEMENT

(CLACKAMAS COUNTY)

AGREED as of the Effective Date.

SUBRECIPIENT

Todos Juntos
PO Box 645
Canby, OR 97013

CLACKAMAS COUNTY

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

Signing on behalf of the Board:

By: Marilyn Moore Sec/Treas By: _____
Eric Johnston, Executive Director BOD Richard Swift, Director
Health, Housing & Human Services

Dated: 8-20-18

Dated: _____

Approved as to budget and work plan

By: Rodney A. Cook
Rodney A. Cook, Director
Children, Youth & Families Division

Dated: 8/27/18

- Exhibit A-1: Scope of Work
- Exhibit A-2: Work Plan Quarterly Report
- Exhibit A-3: Demographic Report
- Exhibit A-4: Client Feedback Survey and Report
- Exhibit B: Program Budget
- Exhibit C: Performance Reporting Schedule
- Exhibit D-1: Request for Reimbursement
- Exhibit D-2: Monthly Activity Report

COPY

September 20, 2018

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Local Grant Agreement with Northwest Family Services
for Evidence-based Parenting Education Classes

Purpose/Outcomes	Provide parenting education classes, enhance teaching skills and competencies of parents to promote child social/emotional well-being and pre-literacy and pre-numeracy skills
Dollar Amount and Fiscal Impact	Agreement has a maximum value of \$21,750. No match is involved
Funding Source	Oregon Community Foundation. No County General funds are involved.
Duration	Effective August 1, 2018 and terminates on June 30, 2019
Previous Board Action	N/A
Strategic Plan Alignment	1. Individuals and families in need are healthy and safe 2. Ensure safe, healthy and secure communities
Contact Person	Rodney A. Cook 503-650-5677
Contract No.	CYF 8973

BACKGROUND:

The Children, Youth & Families Division of the Health, Housing and Human Services Department requests the approval of a Local Grant Agreement with Northwest Family Services to provide parent education and skills training to a minimum of 40 parents. Classes will improve the quality of parent/child interaction and support healthy child development. Services are paid on a cost reimbursement basis.

This Agreement has a maximum value of \$21,750. No County General funds are involved and no match is required. It is effective August 1, 2018 and terminates June 30, 2019. It has been reviewed and approved by County Counsel.

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,


Richard Swift, Director
Health, Housing & Human Services

Healthy Families. Strong Communities.

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

www.clackamas.us

CLACKAMAS COUNTY, OREGON LOCAL SUBRECIPIENT GRANT AGREEMENT CYF-8973	
Program Name: Northwest Services OPEC Parenting Education Program/Project Number: CYF-8973	
This Agreement is between Clackamas County, Oregon , acting by and through its Health, Housing & Human Services Children, Youth & Families Division (COUNTY) and Northwest Family Services (SUBRECIPIENT), an Oregon Non-profit Organization.	
COUNTY Data	
Grant Accountant: Larry Crumbaker	Program Coordinator: Chelsea Hamilton
Clackamas County Finance 2051 Kaen Rd. Oregon City, OR 97045 503-742-5429 larrycrum@clackamas.us	Clackamas County Children, Youth & Families Division 150 Beavercreek Rd. Oregon City, OR 97045 503-650-5682 chamilton@clackamas.us
SUBRECIPIENT Data	
Finance/Fiscal Representative: Rose Fuller	Program Representative: Rose Fuller
Northwest Family Services 6200 SE King Rd. Portland, OR 97222 503-546-6377 rfuller@nwfs.org FEIN: 93-0841022	Northwest Family Services 6200 SE King Rd. Portland, OR 97222 503-546-6377 rfuller@nwfs.org

RECITALS

1. Northwest Family Services (SUBRECIPIENT), a local Nonprofit 501(c)(3) organization, was selected through a competitive process to provide parenting classes to parents with children up to age six to increase parenting skills and knowledge of healthy child development and to promote early learning and readiness for kindergarten. SUBRECIPIENT enhances access to this service across the county and has demonstrated capacity to deliver evidence-based parenting programs.
2. SUBRECIPIENT will conduct two Spanish class series of Abriendo Puertas (total of 10 sessions each), with a minimum of 10 unduplicated parents per series, two English class series of Incredible Years (total of 12 sessions each), with a minimum of 10 unduplicated parents per series and provide childcare services to community parenting groups. Parents will expand their knowledge about child development, build effective parenting skills, and strengthen parent-child relationships – resulting in enhanced children's health, development, and school readiness.
3. The Oregon Community Foundation – Oregon Parenting Education Collaborative (OPEC), which funds this Agreement, is a multi-year initiative to expand access to high-quality parenting programs and develop a stronger and more coordinated parenting education system in order to reach Clackamas County parents with young children, and especially those who are English language learners, low income, living in rural communities, and/or are otherwise traditionally underserved, lack adequate access to evidence-based parenting education.
4. This 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 Local Subrecipient 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 August 1, 2018 and not later than June 30, 2019, 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: SUBRECIPIENT Statement of Program Objectives. 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 of the Oregon Community Foundation – Oregon Parenting Education Collaborative Grant Agreement that is the source of the grant funding.
4. **Grant Funds.** The COUNTY's funding for this Agreement is the Oregon Parenting Education Collaborative issued to the COUNTY by the Oregon Community Foundation. The maximum, not to exceed, grant amount that the COUNTY will pay on this Agreement is **\$21,750**.
5. **Disbursements.** This is a cost reimbursement grant and disbursements will be made monthly in accordance with the requirements contained in Exhibit D: Request for Reimbursement.

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 the 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. If the maximum compensation amount is increased by amendment, the amendment must be fully effective 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. This notice may be transmitted in person, by mail, facsimile, or by email, with confirming record of delivery confirmation through electronic mail return-receipt, or by confirmation that the electronic mail was accessed, downloaded, or printed.
8. **Funds Available and Authorized.** The COUNTY certifies that it has been awarded funds sufficient to finance the costs of this Agreement. SUBRECIPIENT understands and agrees that payment of amounts under this Agreement is contingent on the COUNTY receiving appropriations or other expenditure authority sufficient to allow the COUNTY, in the exercise of its reasonable 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) **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 the COUNTY. At no time may budget modifications change the scope of the original grant application or Agreement.
- d) **Allowable Uses of Funds.** SUBRECIPIENT shall use funds only for those purposes authorized in this Agreement and in accordance with Oregon Community Foundation Oregon Parenting Education Collaborative.
- e) **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.
- f) **Match.** Matching funds are not required for this Agreement.
- g) **Payment.** Routine requests for reimbursement should be submitted monthly by the 15th of the following month using the form and instructions in Exhibit D: Request for Reimbursement. SUBRECIPIENT must submit a final request for payment no later than fifteen (15) days after the end date of this Agreement.
- h) **Performance and Financial Reporting.** SUBRECIPIENT must submit Performance Reports according to the schedule specified in Exhibit C: SUBRECIPIENT Performance Reporting. SUBRECIPIENT must submit Financial Reports according to the schedule specified in Exhibit D: Request for Reimbursement. All reports must be submitted on the templates provided and be signed and dated by an authorized official of SUBRECIPIENT.
- i) **Audit.** SUBRECIPIENT shall comply with the audit requirements prescribed by State and Federal law.
- j) **Monitoring.** SUBRECIPIENT agrees to allow access to conduct site visits and inspections of financial and programmatic records for the purpose of monitoring. COUNTY, the Oregon Community Foundation, and their duly authorized representatives shall have access to such 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, copies and transcripts. Monitoring may be performed onsite or offsite, at the COUNTY's discretion.
- k) **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 six (6) years following the Project End Date (June 30, 2019), 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.

- l) **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 the 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.

12. General Agreement Provisions.

- a) **Indemnification.** SUBRECIPIENT agrees to indemnify and hold COUNTY, its elected officials, officers, employees and agents harmless with respect to any claim, cause, damage, action, penalty or other cost (including 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 elected officials, officers, employees and agents. This coverage shall include Contractual Liability insurance for the indemnity provided under this Agreement. The policy(ies) 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 Liability.** If the Agreement involves the use of vehicles, SUBRECIPIENT 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 the 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 the 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 required insurance, other than Professional Liability, Workers' Compensation, and Personal Automobile Liability and Pollution Liability Insurance, shall include "Clackamas County, its elected officials, officers, employees and agents" as an additional insured, but only with respect to SUBRECIPIENT's activities under this Agreement.
- 6) **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 the 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.
- 7) **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.
- 8) **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.
- 9) **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.
- 10) **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.
- 11) **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 the COUNTY.
- d) **Independent Status.** SUBRECIPIENT is independent of the COUNTY and will be responsible for any federal, state, or local taxes and fees applicable to payments hereunder. SUBRECIPIENT is not an agent of the COUNTY and undertakes this work independent from the control and direction of the COUNTY excepting as set forth herein. SUBRECIPIENT shall not seek or have the power to bind the 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 the 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)

SIGNATURE PAGE TO SUBRECIPIENT AGREEMENT

(CLACKAMAS COUNTY)

AGREED as of the Effective Date.

SUBRECIPIENT

Northwest Family Services
256 Warner Milne Road
Oregon City, OR 97045

CLACKAMAS COUNTY

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

By: 
Rose Fuller, Executive Director

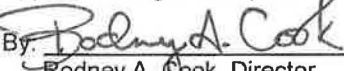
Dated: 8/21/18

Signing on behalf of the Board:

By: _____
Richard Swift, Director
Health, Housing & Human Services

Dated: _____

Approved budget/work plan

By: 
Rodney A. Cook, Director
Children, Youth & Families Division

Dated: 8/27/18

- Exhibit A-1: Scope of Work
- Exhibit A-2: Work Plan Quarterly Report
- Exhibit A-3: Demographic Report
- Exhibit A-4: Client Feedback Survey and Report
- Exhibit B: Program Budget
- Exhibit C: Performance Reporting Schedule
- Exhibit D-1: Request for Reimbursement
- Exhibit D-2: Monthly Activity Report

September 20, 2018

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Professional Services Agreement with Craig R. Warden, to provide services as the Associate Emergency Medical Services (EMS) Medical Director

Purpose/Outcomes	Serve as the Associate Emergency Medical Services Medical Director, the medical advisor to the County on EMS clinical matters, including emergency preparedness planning efforts
Dollar Amount and Fiscal Impact	Contract maximum value is \$233,646.33
Funding Source	Emergency Medical Services. No County General Funds are involved.
Duration	Effective August 01, 2018 and terminates on June 30, 2023
Previous Board Action	No Previous Board Actions
Strategic Plan Alignment	1. Individuals and families in need are healthy and safe 2. Ensure safe, healthy and secure communities
Contact Person	Dawn Emerick, Public Health Director – 503-655-8479
Contract No.	8925

BACKGROUND:

The Clackamas County Public Health Division (CCPHD) of the Health, Housing & Human Services Department requests the approval of an Agreement with Craig R. Warden, to provide services as the Associate Emergency Medical Services (EMS) Medical Director.

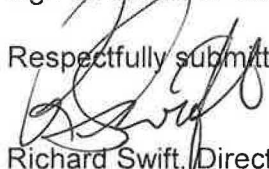
The Associate EMS Medical Director serves as back up to the Emergency Medical Services Medical Director. Serves as lead Medical Director for the Clackamas County Department of Communications (C-COM) and the lead Medical Director for the Reach & Treat Team and River Rescue Program.

This contract is effective August 1, 2018 and continues through June 30, 2023. This contract has been reviewed by County Counsel on July 16, 2018.

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



**CLACKAMAS COUNTY
PERSONAL/PROFESSIONAL SERVICES CONTRACT**

This Personal/Professional Services Contract (this "Contract") is entered into between Craig R. Warden ("Contractor"), and Clackamas County, a political subdivision of the State of Oregon ("County") on behalf of Public Health.

ARTICLE I.

1. Effective Date and Duration. This Contract shall become effective upon September 1, 2018. Unless earlier terminated or extended, this Contract shall expire on August 31, 2023. 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.

2. Scope of Work. Contractor will provide the following personal/professional services: Associate Emergency Medical Services Medical Director ("Work"), further described in **Article III**.

3. Consideration. The County agrees to pay Contractor, from available and authorized funds, a sum not to exceed two hundred forty-one thousand nine hundred three dollars and five cents (\$241,903.05), for accomplishing the Work required by this Contract. If any interim payments to Contractor are made, such payments shall be made only in accordance with the schedule and requirements in Article III.

4. Travel and Other Expense. Authorized: ☒ Yes ☐ No

If travel expense reimbursement is authorized in this Contract, such expense shall only be reimbursed at the rates in the County Contractor Travel Reimbursement Policy, hereby incorporated by reference and found at: <http://www.clackamas.us/bids/terms.html>. Travel expense reimbursement is not in excess of the not to exceed consideration.

5. Contract Documents. This Contract consists of the following documents which are listed in descending order of precedence and are attached and incorporated by reference, this Contract and Exhibits A and B.

6. Contractor Data.

Address: 4908 NE Tillamook Street, Portland, Oregon 97213

Contractor Contract Administrator: Craig Warden

Phone No.: (503) 318-6430

Email: wardenc711@comcast.net

MWESB Certification: ☐ DBE # ☐ MBE # ☐ WBE # ☐ ESB #

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 could subject Contractor to backup withholding.

ARTICLE II.

- 1. ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence and 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. Such books and records shall be maintained by Contractor for a minimum of three (3) 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 FUNDS.** County certifies that sufficient funds are available and authorized for expenditure to finance costs of this Contract within its current annual appropriation or expenditure limitation, provided, however, that continuation of this Contract, or any extension, after the end of the fiscal period in which it is written, is contingent on a new appropriation or limitation for each succeeding fiscal period sufficient in amount, in the exercise of the County's reasonable administrative discretion, to continue to make payments under this Contract.
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 federal, state, county, and local laws, ordinances, and regulations applicable to the Work to be done under this Contract. Contractor specifically agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor shall also comply with the Americans with Disabilities Act of 1990 (Pub. L. No. 101-336), Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws. Contractor further agrees to make payments promptly when due, to all persons supplying to such Contractor, labor or materials for the prosecution of the Work provided in this Contract; pay all contributions or amounts due the Industrial Accident Funds from such Contractor responsibilities incurred in the performance of this Contract; not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished; pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. If Contractor fails or refuses to make any such payments required herein, the appropriate County official may pay such claim. Any payment of a claim in the manner authorized in this section shall not relieve the Contractor or Contractor's surety from obligation with respect to unpaid claims. Contractor shall promptly pay any person or entity that furnishes medical care to Contractor's employees those sums which Contractor agreed to pay for such services and all money Contractor collected or deducted from employee's wages to provide such services.
5. **EXECUTION AND COUNTERPARTS.** This Contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.
6. **GOVERNING LAW.** This Contract shall be governed and construed in accordance with the laws of the State of Oregon 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.
7. **HAZARD COMMUNICATION.** Contractor shall notify County prior to using products containing hazardous chemicals to which County employees may be exposed. Products containing hazardous chemicals are those products defined by Oregon Administrative Rules, Chapter 437. Upon County's request, Contractor shall immediately provide Material Safety Data Sheets for the products subject to this provision.

- 8. INDEMNITY, RESPONSIBILITY FOR DAMAGES.** 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.
- 9. 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; (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 (except insofar as benefits are otherwise required by law if the Contractor is presently a member of the Oregon Public Employees Retirement System); and (C) If the Contractor has the assistance of other persons in the performance of this Contract, and the Contractor is a subject employer, the Contractor shall qualify and remain qualified for the term of this Contract as an insured employer under ORS Chapter 656. (Also see Article V)

At present, the Contractor certifies that he or she, if an individual is not a program, County or Federal employee. The Contractor, if an individual, certifies that he or she is not a member of the Oregon Public Employees Retirement System.

- 10. INSURANCE.** Contractor shall provide insurance as indicated on **Article IV**, attached hereto and by this reference made a part hereof. Insurance policies, which cannot be excess to a self-insurance program, are to be issued by an insurance company authorized to do business in the State of Oregon.

The County shall reimburse Contractor for the Cost of Professional Liability insurance coverage, which shall not exceed fifty percent (50%) of the actual cost of coverage, and shall not exceed \$2,000.00 per year. Contractor must submit the original invoice form their insurance broker each year the Contractor invoices the County for reimbursement.

If required, liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the expiration or termination of this Contract for a duration of thirty-six (36) months or a maximum time period the Contractor's insurer will provide "tail" coverage as subscribed, or 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. The Contractor shall be responsible for the cost of the "tail" coverage.

- 11. LIMITATION OF LIABILITIES.** Except for liability arising under or related to Section 14 or 21(B), 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. 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.

12. **NOTICES.** Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, email, or mailing the same, postage prepaid, to the County at: Clackamas County Procurement, 2051 Kaen Road, Oregon City, OR 97045, or procurement@clackamas.us, or to Contractor at the address or number set forth in Section 1 of this Contract, or to such other addresses or numbers as either party may hereafter indicate. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.
13. **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.
14. **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) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards; and (D) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.
15. **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, Paragraphs 1, 6, 8, 11, 13, 14, 15, and 21.
16. **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.
17. **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. 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, Paragraphs 1, 8, 13, 15, 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.
18. **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.

- 19. TAX COMPLIANCE CERTIFICATION.** Contractor must, throughout the duration of this Contract 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 Contract. Further, any violation of Contractor's warranty in this Contract that Contractor 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 Contract. Any violation 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, at law, or in equity, including but not limited to: (A) Termination of this Contract, in whole or in part; (B) Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to County's setoff right, without penalty; and (C) 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 Contractor'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.

The Contractor represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Contract, Contractor has faithfully complied with: (A) All tax laws of this state, including but not limited to ORS 305.620 and ORS Chapters 316, 317, and 318; (B) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any Work performed by Contractor; (C) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (D) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

- 20. 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 CONTRACTOR and COUNTY
- 21. TERMINATIONS.** This Contract may be terminated for the following reasons: (A) This Contract may be terminated at any time by mutual consent of the parties, or by the County for convenience upon thirty (30) days' written notice to the Contractor; (B) County may terminate this Contract effective upon delivery of notice to Contractor, or at such later date as may be established by the County, if (i) federal or state laws, rules, regulations, or guidelines are modified, changed, or interpreted in such a way that either the Work under this Contract is prohibited or the County is prohibited from paying for such Work from the planned funding source; or (ii) any license or certificate required by law or regulation to be held by the Contractor to provide the services required by this Contract is for any reason denied, revoked, or not renewed; (C) This Contract may also be immediately terminated by the County for default (including breach of Contract) if (i) Contractor fails to provide services or materials called for by this Contract within the time specified herein or any extension thereof; or (ii) Contractor 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 notice from the County, fails to correct such failure within ten (10) business days; or (D) If sufficient funds are not provided in future approved budgets of the County (or from applicable federal, state, or other sources) to permit the County in the exercise of its reasonable administrative discretion to continue this Contract, or if the program for which this Contract was executed is abolished, County may terminate this Contract without further liability by giving Contractor not less than thirty (30) days' notice.

- 22. REMEDIES.** (A) In the event of termination pursuant to Article II Section 20(A), (B)(i), or (D), Contractor's sole remedy shall be a claim for the sum designated for accomplishing the Work multiplied by the percentage of Work completed and accepted by the County, less previous amounts paid and any claim(s) which the County has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under Section 21(A), Contractor shall pay any excess to County on demand. (B) In the event of termination pursuant to Sections 20(B)(ii) or 20(C), the County shall have any remedy available to it in law or equity. If it is determined for any reason that Contractor was not in default under Sections 20(B)(ii) or 20(C), the rights and obligations of the parties shall be the same as if the Contract was terminated pursuant to Section 20(A). (C) Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless County expressly directs otherwise in such notice of termination. 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.
- 23. 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.
- 24. TIME IS OF THE ESSENCE.** Contractor agrees that time is of the essence in the performance this Contract.
- 25. 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.
- 26. FORCE MAJEURE.** Neither County nor Contractor shall be held responsible for delay or default caused by fire, terrorism, riot, acts of God, or war where such cause was beyond, respectively, County's or Contractor's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.
- 27. 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.
- 28. COMPLIANCE.** Pursuant to the requirements of ORS 279B.020 and 279B.220 through 279B.235 and Article XI, Section 10, of the Oregon Constitution, the following terms and conditions are made a part of this Contract:
- (A) Contractor shall: (i) Make payments promptly, as due, to all persons supplying to the Contractor labor or materials for the prosecution of the Work provided for in this Contract; (ii) Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of this Contract; (iii) Not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished.
- (B) If the Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a subcontractor by any person in connection with this Contract as such claim becomes due, the proper officer representing the 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 to the Contractor by reason of this Contract.

(C) The Contractor shall pay employees for Work in accordance with ORS 279B.020 and ORS 279B.235, which is incorporated herein by this reference. All subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.

(D) The Contractor shall promptly, as due, make payment to any person or co-partnership, association or corporation furnishing medical, surgical and hospital care, or other needed care and attention incident to sickness and injury to the employees of the Contractor, of all sums which the Contractor agrees to pay for such services and all moneys and sums which the Contractor collected or deducted from the wages of the Contractor's employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services.

- 29. 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 its breach of its data security or 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.

- 30. 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.

Article III - SCOPE OF WORK

Contractor Responsibilities:

1. Serve as Associate Emergency Medical Services Medical Director (EMSMD), a medical advisor to the County on EMS matters, including emergency preparedness, and acts as agent for the Clackamas County EMSMD.
2. Serve as lead Medical Director for the Clackamas County Department of Communications (C-COM).
3. Serve as lead Medical Director for the Reach & Treat Team and River Rescue Program.
4. Assist EMSMD in implementing a county-wide coordinated Quality Improvement Program.
5. The Quality Improvement Program will be integrated to include PSAP handling of medical calls, communications center EMS operations, Emergency Medical and Priority Dispatch, first response agencies, ambulance service providers and other related agencies and programs. Each agency Supervising Physician will be responsible for administering the Quality Improvement Program within each agency and assuring that the agency participates in the countywide program.
6. Participate in the resolution of quality assurance problems.
7. Urgent issues and complaints of an egregious clinical nature may be referred directly to the County EMS Medical Director for assistance in generating an immediate investigation and/or intervention. Complaints of a clinical nature and those that may have clinical components will be referred to the agency Supervising Physician and EPAB for investigation.
8. Participate with the EPAB.

9. Implement protocols for Emergency Medical Dispatch and Priority Dispatch.
10. Assist EMSMD in establishing standards for certification, equipment, standards of care, clinical protocols and patient hand-off procedures for Participating Provider agencies.
11. Assist the County in disaster preparedness and response.

Contractor Requirements

Contractor must maintain at all times during the term of the Contract or any renewal period the following:

- Must currently have and maintain an Oregon M.D. or D.O. license;
- **Must be board certified or board eligible in Emergency Medicine and/or Emergency Medical Services;**
- Provide current evidence of credentials, curriculum vitae, and continuing medical education activities;
- Provide current DEA license for controlled medications; and
- **Able to qualify as an Oregon EMS physician supervisor (per OAR 847-035-0020)**

The County Contract administrator for this Contract is: Philip Mason-Joyner

CONSIDERATION

- a. Consideration Rates – Time and material basis in accordance with the following fee schedule:

	Year 1	Year 2	Year 3	Year 4	Year 5
Hourly rate (3% COLA)	\$140.00	\$144.20	\$148.53	\$152.98	\$157.57
Hourly Rate estimated on 6 hours per week (312)	\$43,680.00	\$44,990.40	\$46,340.11	\$47,730.32	\$49,162.22
Estimated Cost of Insurance	\$2,000.00	\$2,000.00	\$2,000.00	\$2,000.00	\$2,000.00
Total Annual Amount	\$45,680.00	\$46,990.40	\$48,340.11	\$49,730.32	\$51,162.22
Total Contract Value					\$241,903.05
MONTHLY STIPEND	\$3,640.00	\$3,749.20	\$3,861.68	\$3,977.53	\$4,096.85

- b. 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 \$241,903.05.
- c. CONTRACTOR shall submit invoices by the fifteenth day of the month following that in which service was performed. **The invoice shall list the contract #8924, month and year of service, monthly Stipend amount as described in CONSIDERATION Section a. above and a written description of work activities performed (e.g. meetings attended, significant milestones and actions) for the reporting period.** Invoices should also include reimbursement of reasonable expenses as approved by the County in advance and mileage at the standard County rate. Contractor agrees to provide an average minimum of approximately six hours of service per week. If weekly service hours fall below 6 hours per week, the County reserves the right to revert to time and material billing based on true and verifiable documentation. Travel time shall not be considered in determination of service hours. Invoices shall be submitted electronically to: PublicHealthAP@clackamas.us and PMason@clackamas.us
- d. Unless otherwise specified, Contractor shall submit monthly invoices for Work performed. **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.** Payments shall be made to Contractor 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. The billings shall also include the total amount billed to date by Contractor prior to the current invoice.

Article IV - INSURANCE

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

1. Required by County of Contractor with one or more workers, as defined by ORS 656.027.

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.

2. ☒ 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 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.

3. ☒ 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. It shall include contractual liability coverage for the indemnity provided under this Contract.

4. ☒ Required by County ☐ Not required by County

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

5. Certificates of Insurance. Contractor shall furnish evidence of the insurance required in this Contract. The insurance for general liability and automobile liability must include an endorsement naming the County, its officers, elected officials, agents, and employees as additional insureds with respect to the Work under this Contract. Insuring companies or entities are subject to County acceptance. 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.

6. Notice of cancellation or change. There shall be no cancellation, material change, 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 Procurement Division, 2051 Kaen Road, Oregon City, OR 97045 or procurement@clackamas.us.

Article V - CERTIFICATION STATEMENT FOR INDEPENDENT CONTRACTOR

(Contractor completes if Contractor is not a corporation or is a Professional Corporation)

Contractor certifies he/she is independent as defined in Oregon Revised Statutes 670.600 and meets the following standards that the Contractor is:

1. Free from direction and control, beyond the right of the County to specify the desired result; **AND**
2. Are licensed if licensure is required for the services; **AND**
3. Are responsible for other licenses or certificates necessary to provide the services **AND**
4. Are customarily engaged in an "independently established business."

To qualify under the law, an "independently established business" must meet three (3) out of the following five (5) criteria. **Check as applicable:**

- ☒ A. Maintains a business location that is: (a) Separate from the business or work of the County; or (b) that is in a portion of their own residence that is used primarily for business.
- ☒ B. Bears the risk of loss, shown by factors such as: (a) Entering into fixed price contracts; (b) Being required to correct defective work; (c) Warranting the services provided; or (d) Negotiating indemnification agreements or purchasing liability insurance, performance bonds, or errors and omissions insurance.
- ☒ C. Provides contracted services for two or more different persons within a 12-month period, or routinely engages in business advertising, solicitation or other marketing efforts reasonably calculated to obtain new contracts to provide similar services.
- ☒ D. Makes significant investment in the business through means such as: (a) Purchasing tools or equipment necessary to provide the services; (b) Paying for the premises or facilities where the services are provided; or (c) Paying for licenses, certificates or specialized training required to provide the services.
- ☐ E. Has the authority to hire and fire other persons to provide assistance in performing the services.

Additional provisions:

1. A person who files tax returns with a Schedule F and also performs agricultural services reportable on a Schedule C is not required to meet the independently established business requirements.
2. Establishing a business entity such as a corporation or limited liability company, does not, by itself, establish that the individual providing services will be considered an independent contractor.

Signature on Next Page

Article VI – SIGNATURES

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.

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

CRAIG R. WARDEN

Craig R Warden

Digitally signed by Craig R Warden
DN: cn=Craig R Warden, o=Craig R Warden, ou,
email=wardenc711@comcast.net, c=US
Date: 2018.08.28 08:45:18 -0700

Authorized Signature

Craig R. Warden, MD, MPH, MS

Name / Title Printed

08/28/2018

Date

503-318-6430//877-339-6669

Telephone / Fax Number

Oregon Business Registry #

**CLACKAMAS COUNTY BOARD OF
COUNTY COMMISSIONERS by:**

Richard Swift, Director

Health, Housing, and Human Services

Date

September 20, 2018

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Amendment #2 of the Grant Agreement with
Oregon Health & Science University for the Oregon Care Coordination Program (CaCoon)

Purpose/Outcomes	CaCoon is an abbreviation for Oregon Care Coordination Program. Revenue from OHSU CaCoon program allows CCPHD to provide a Community Health Nurse to facilitate community-based and family-centered care coordination for children with special health needs.
Dollar Amount and Fiscal Impact	Amendment #02 increases the contract by \$10,000. Bringing the maximum contract value to \$134,000.
Funding Source	Grant funds from OHSU - No County General Funds are involved.
Duration	Effective October 1, 2017 and terminates on September 30, 2018
Previous Board Action	No Previous Board Actions
Strategic Plan Alignment	1. Individuals and families in need are healthy and safe 2. Ensure safe, healthy and secure communities
Contact Person	Dawn Emerick, Public Health Director – 503-655-8479
Contract No.	8378-02

BACKGROUND:

The Clackamas County Public Health Division (CCPHD) of the Health, Housing & Human Services Department requests the approval of Amendment #2 to the Grant Agreement with Oregon Health & Science University (OHSU) for the Oregon Care Coordination Program (CaCoon).

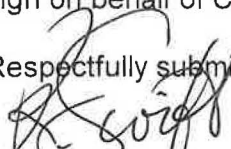
CCPHD receives grant funding from OHSU for the continuation of the Oregon Care Coordination Program (CaCoon). This grant allows CCPHD to provide a Community Health Nurse to facilitate community-based and family-centered care coordination for children with special health needs. Specific services include assessment of needs, coordination of healthcare and other services, and knowledge of local comprehensive services.

This Amendment is effective October 1, 2017 and continues through September 30, 2018. This contract has been reviewed by County Counsel on September 11, 2018.

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

Healthy Families. Strong Communities.

2051 Kaen Road, Oregon City, OR 97045 • Phone: (503) 742-5300 • Fax: (503) 742-5352

www.clackamas.us/community_health

Research Subaward Agreement Amendment Number 2

Pass-through Entity (PTE)		Subrecipient	
Institution/Organization ("PTE") Entity Name: Oregon Health & Science University Email Address: spasub@ohsu.edu Principal Investigator: Benjamin Hoffman		Institution/Organization ("Subrecipient") Entity Name: Clackamas County acting by and through its Health, Housing and Human Services Department, Public Health Division Email Address: jweber2@co.clackamas.or.us Principal Investigator: Julie Aalbers	
Project Title: Maternal and Child Health Services Block Grant			
PTE Federal Award No. B04MC29358 (Via Subaward 143021)		Federal Awarding Agency: HRSA (via the Oregon Health Authority)	
Subaward Period of Performance: Start Date: 10/01/2016 End Date: 09/30/2018		Amount Funded This Action: \$10,000	Subaward No: 1010448_CLACKAMAS_LHD
Effective Date of Amendment: 10/01/2017	Total Amount of Federal Funds Obligated to Date: \$134,000	Subject to FFATA: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Automatic Carryover: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

Amendment(s) to Original Terms and Conditions

This Amendment revised the above-referenced Research Subaward Agreement as follows:

Funds for the Current Budget Period are hereby awarded in the amount of \$10,000. The total awarded for the current budget period from 10/01/2017 through 9/30/2018 is now \$72,000. The Payment Schedule in Attachment 5.1 is hereby replaced with the Payment Schedule in Attachment 5.2.

Attachment D of the Statement of Work in Attachment 5.1 is hereby replaced with Attachment D of the Statement of Work in Attachment 5.2.

All other terms and conditions of this Subaward Agreement remain in full force and effect.

By an Authorized Official of PTE <div style="text-align: right;">Date: _____</div> Jen Michaud Subout Grants & Contracts Administrator	By an Authorized Official of Subrecipient <div style="text-align: right;">Date: _____</div> Name: _____ Title: _____
--	--

Attachment D

Clackamas County
FY18 Activity Breakdown and Payment Schedule

Clackamas County shall complete the following:

CaCoon Activities up to 30%	SPOC Activities at least 70%	Total Subcontract 100%
\$18,600	\$53,400	\$72,000

With your SPOC activities, you agree to complete the following number of SPOC in the following categories (see Attachment A Part III (SPOC scope of work) and Attachment E for definitions of complex and further details)

8	Re-evaluation
6	New
14	Total SPOC

Each SPoC developed will serve a unique child or youth and their family.

Of the total SPOC to be completed:

a minimum of	6	must be Complex SPOCs; and
a minimum of	3	must be Transition-Focused SPOCs

Note: The transition-focused and complex requirements are not mutually exclusive. That is, a SPOC may serve a CYSHCN who is both transition-focused AND complex. In this case, the SPOC would count toward both your transition-focused requirements AND your complex requirements.

This subcontract will be paid in installments on the following schedule:

	Direct Costs	Indirect Costs	Total Costs
LHD to invoice OHSU an initial amount as soon as subcontract is fully executed	\$33,820	\$3,380	\$37,200
LHD to invoice OHSU as soon as amendment is fully executed	\$9,090	\$910	\$10,000
LHD to invoice OHSU the FINAL amount after LHD has submitted all required deliverables	\$22,545	\$2,255	\$24,800
Total Funding	\$65,455	\$6,545	\$72,000

SUBAWARD 1010448_CLACKAMAS, Amendment 2
ATTACHMENT 5.2 – PAYMENT SCHEDULE

PAYMENT SCHEDULE FOR THE CURRENT BUDGET PERIOD
10/1/2017 through 09/30/2018:

Payment Schedule:

The Payment Schedule is hereby replaced with the following:

PTE shall pay Subrecipient according to the following schedule upon receipt of invoice from Subrecipient. Invoices are to be submitted via email to spasub@ohsu.edu. If email of invoices is not possible, they may be mailed to the Financial Contact listed in Attachment 3A.

- Payment 1) Upon full execution of this Agreement and receipt of invoice, PTE will issue an advance payment of \$37,200.
- Payment 2) Upon receipt of executed amendment and receipt of invoice, PTE will issue a payment of \$10,000.
- Payment 3) Upon satisfactory completion of the Statement of Work on or after 9/30/2018, receipt of invoice and Certification of Completion per Attachment 4, PTE will issue a payment of \$24,800.

The final invoice must be received no later than 45 days after the end of the budget period and must be clearly marked "FINAL."

September 20, 2018

Board of County Commissioner
Clackamas County

Members of the Board:

Approval of Amendment #2 to an Intergovernmental Agreement with
Multnomah County for the reduction of opioid overdose and death program.

Purpose/Outcomes	Amendment #2 adds funding for year 3 of the project. Clackamas County Public Health Division (CCPHD) will plan and conduct activities to meet the following objectives: Increase provider and public understanding of opioid risks, treatment options, and chronic pain management; Increase provider understanding and use of the State of Oregon's Prescription Drug Monitoring Program; Increase law enforcement and public understanding of risks, treatment, and use of naloxone; Meet weekly with Multnomah County staff, as scheduled by Multnomah County to provide plans and summaries of Clackamas's activities; Provide a written report documenting activities and related outcomes to Multnomah County at the end of the grant period.
Dollar Amount and Fiscal Impact	CCPHD will receive \$13,000.
Funding Source	Federal award passed through by Multnomah County. No County General Funds are involved.
Duration	Effective October 1, 2018 and terminates on September 30, 2019
Strategic Plan Alignment	1. Improved community safety and health 2. Ensure safe, health and secure communities
Previous Board Action	The Board last approved this Agreement on April 27, 2017 Agenda item – 042717-A1, October 26, 2017 – 102617 –A5
Contact Person	Dawn Emerick, Public Health Director – 503-655-8479
Contract No.	8263-2

BACKGROUND:

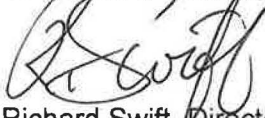
The Clackamas County Public Health Division (CCPHD) of the Health, Housing & Human Services Department requests the approval of Amendment #2 to an Intergovernmental Agreement with Multnomah County for the reduction of opioid overdose and death program. This allows the CCPHD to continue to provide related services to Clackamas County residents.

This Agreement is effective October 1, 2018 and continues through September 30, 2019.
This contract has been reviewed by County Counsel on September 11, 2018.

RECOMMENDATION:

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

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. Swift", written over the printed name.

Richard Swift, Director
Health, Housing, and Human Services

MULTNOMAH COUNTY
INTERGOVERNMENTAL AGREEMENT AMENDMENT #2
(Amendment to change Contract provisions during contract term.)

Contract Number 4400003112

This is an amendment to Multnomah County's Contract referenced above effective October 1, 2018 between Multnomah County, Oregon, hereinafter referred to as County, and Clackamas County, hereinafter referred to as Contractor.

The parties agree:

1. The following changes are made to Contract No. 4400003112:
 - a. This amendment extends the end date to September 30, 2019 for Contract activities originally funded through September 30, 2018.
 - b. This amendment increased funding in the amount of \$13,000 for Contract activities from October 1, 2018 to September 30, 2019. The maximum contract amount for the period of October 1, 2016 to September 30, 2019 is \$39,000.
 - c. An amended Attachment F is attached to this contract and replaces all previous versions of Attachment F.
2. All other terms and conditions of the contract shall remain the same.

MULTNOMAH COUNTY, OREGON:

County Chair or Designee: _____

Date: _____

Dept Director or Designee: _____

Date: _____

N/A

N/A

REVIEWED:

JENNY M. MADKOUR
COUNTY ATTORNEY FOR MULTNOMAH COUNTY

By
Assistant County Attorney

/s/ Bernadette Nunley

Date: _____

Via email 8/25/2018

CONTRACTOR:

Signature: _____

Print Name: _____

Title: _____

Date: _____

Approved as to form
by: _____

Date: _____

ATTACHMENT F

POST FEDERAL AWARD REQUIREMENTS STANDARDS

In accordance with CFR 200, Subpart D—Post Federal Award Requirements Standards for Financial and Program Management, §200.331 – Requirements for Pass Through Entities, and based on the information provided to Multnomah County (the County) by its awarding agency, the County is providing the following federal award information:

	A	B	C
Subrecipient Name	Clackamas County Public Health Division	Clackamas County Public Health Division	Clackamas County Public Health Division
Subrecipient DUNS #	96992656	96992656	96992656
Name of Federal Awarding Agency	US Department of Justice, Office of Justice Programs	US Department of Justice, Office of Justice Programs	US Department of Justice, Office of Justice Programs
Name of Pass-through Entity	Multnomah County	Multnomah County	Multnomah County
CFDA #	16.754	16.754	16.754
Program Name	Regional Approaches to Decrease Opioid Overdose and Deaths in the Portland Metropolitan Tri-County	Regional Approaches to Decrease Opioid Overdose and Deaths in the Portland Metropolitan Tri-County	Regional Approaches to Decrease Opioid Overdose and Deaths in the Portland Metropolitan Tri-County
Federal Award ID #	2016-PM-BX-K003	2016-PM-BX-K003	2016-PM-BX-K003
Federal Award Date	9/20/2016	9/20/2016	9/20/2016
Subaward Period of Performance:			
Start Date	10/1/2016	10/1/2016	10/1/2016
End Date	9/30/2019	9/30/2019	9/30/2019
Amt of Federal Funds Obligated by this Action	\$13,000	\$13,000	\$13,000
Total Amt of Federal Funds Obligated to Subrecipient	\$13,000	\$26,000	\$39,000
Federal Awarding Contact Info	Jeanne Weber 2051 Kaen Rd., Suite 367 Oregon City, OR 97045	Jeanne Weber 2051 Kaen Rd., Suite 367 Oregon City, OR 97045	Jeanne Weber 2051 Kaen Rd., Suite 367 Oregon City, OR 97045
Pass-through Entity Contact Info	Tyler Swift (503)988-9374 tyler.swift@multco.us	Tyler Swift (503)988-9374 tyler.swift@multco.us	Tyler Swift (503)988-9374 tyler.swift@multco.us
Research & Development Award? (Yes/No)	No	No	No
Indirect Cost Rate for Award (%)	9%	9%	9%
Is De Minimis Indirect Rate Being Charged? (Yes/No)	No	No	No
	D	E	F
Subrecipient Name			
Subrecipient DUNS #			
Name of Federal Awarding Agency			
Name of Pass-through Entity			
CFDA #			
Program Name			
Federal Award ID #			
Federal Award Date			
Subaward Period of Performance:			
Start Date			
End Date			
Amt of Federal Funds Obligated by this Action	Multnomah County Contract #4400003112-2		

Total Amt of Federal Funds Obligated to Subrecipient			
Federal Awarding Contact Info			
Pass-through Entity Contact Info			
Research & Development Award? (Yes/No)			
Indirect Cost Rate for Award (%)			
Is De Minimis Indirect Rate Being Charged? (Yes/No)			

8/25/2015

September 20, 2018

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of the Intergovernmental Agreement (IGA) with Portland State University for
Trauma Informed Care Training and Consultation

Purpose/Outcomes	Provides training and consultation to Behavioral Health staff and leadership for Trauma Informed Care Services.
Dollar Amount and Fiscal Impact	Maximum value of Agreement is \$10,000.
Funding Source	No County General Funds are involved. State of Oregon, Oregon Health Plan (OHP) funds
Duration	Effective Upon Signature and terminates on June 30, 2020
Previous Board Action	No previous Board action.
Strategic Plan Alignment	1. Individuals and families in need are healthy and safe. 2. Ensure safe, healthy and secure communities.
Contact Person	Mary Rumbaugh, Director Behavioral Health Division 503-742-5305
Contract No.	#8808

BACKGROUND:

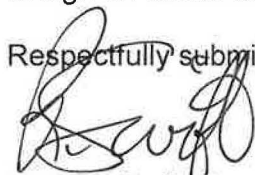
The Clackamas County Behavioral Health Division of the Housing & Human Services Department requests the approval of the Intergovernmental Agreement with Portland State University for purpose of providing Division staff and leadership with training and consultation for Trauma Informed Care. Training and consultation are to ensure that services/interventions provided by the Behavioral Health Division align with the principles of the Trauma Informed Care approach.

This Intergovernmental Agreement, with a maximum value of \$10,000, is effective upon signature and terminates June 30, 2020. County Counsel reviewed and approved this Agreement September 10, 2018.

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,



Richard Swift, Director
Health, Housing and Human Services

Healthy Families. Strong Communities.

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

www.clackamas.us

INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE COUNTY OF CLACKAMAS, OREGON
HEALTH, HOUSING AND HUMAN SERVICES DEPARTMENT
BEHAVIORAL HEALTH DIVISION
AND
PORTLAND STATE UNIVERSITY
PSU Contract #552915

AGREEMENT # 8808

I. PURPOSE

This Agreement is entered into between Clackamas County Department of Health, Housing and Human Services, Behavioral Health Division (County) and Portland State University, School of Social Work Regional Research Institute for Human Services (Contractor) for the cooperation of units of local government under the authority of ORS 190.010.

This Agreement provides the basis for the coordination of training and consultation regarding trauma informed care.

II. SCOPE OF WORK

A. Contractor agrees to:

1. Provide training and consultation to County staff regarding trauma informed care and best practices to implement at the health centers. Trainings to be scheduled as agreed upon by both parties.
2. Provide all training materials and handouts.
3. Provide on-site consulting regarding trauma informed care implementation in the clinics.

III. COMPENSATION

- A. County shall compensate Contractor as specified in **Exhibit B: Compensation**. The payment shall be full compensation for work performed, for services rendered, and for all labor, materials, supplies, equipment, mileage, and incidentals necessary to perform the work and services.
- B. The total payment to Contractor shall not exceed **\$10,000.00**.

IV. LIAISON RESPONSIBILITY

Camilla Pettie, Assistant Manager, School of Social Work Regional Research Institute for Human Services, will act as liaison from Contractor for this project.

Mary Rumbaugh, Director, Behavioral Health Division, will act as liaison from County.

V. SPECIAL REQUIREMENTS

- A. County and Contractor agree to comply with all applicable local, state and federal ordinances, statutes, laws and regulations, including Oregon Public Contract laws and all applicable provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), PL 104-191, 45 CFR Parts 160-164, as well as all applicable provisions in each party's Intergovernmental Agreement with the AMH, if any. The parties agree that the County is a covered entity for the purposes of HIPAA and any regulations and official guidance promulgated thereunder (collectively, "HIPAA"), as amended by the Health Information Technology for Economic and Clinical Health Act ("HITECH") together referred to as the "HIPAA Privacy Regulations". The parties further acknowledge and agree that Contractor is not a "Business Associate" of County or AMH as that term is defined and used under HIPAA Privacy Regulations or the Omnibus Rules. Services provided by Contractor under this Agreement do not require access, use, or disclosure of any protected health information ("PHI"). County shall not provide any PHI to Contractor. Notwithstanding the foregoing, under no circumstances will Contractor incorporate PHI in any written record, report, or communication made with respect to the services provided under this Agreement.
- B. Within the applicable limits of the Oregon Tort Claims Act, County agrees to indemnify, protect and save Contractor, and the Contractor Board of Trustees, along with any of their past, present, or future officers, employees and agents, while acting within the scope of their duties as such, harmless from and against all claims, demands, and causes of action of any kind or character, including the cost of defense thereof, arising against Contractors or Contractor's trustees, officers, and employees resulting from or arising out of, or relating to any disclosure of PHI, including a breach thereof, or compliance or failure to comply with the HIPAA Privacy Regulations.
- C. Access to Records. Each party to this Agreement, as well as the State of Oregon and the Federal Government, and their duly authorized representatives shall have access to the books, documents, papers, and records of the other party to this Agreement which are directly pertinent to the Agreement for the purpose of making audit, examination, excerpts, and transcripts.
- D. This Agreement 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 therefor. Any provisions herein that would conflict with law are deemed inoperative to that extent.

VI. AMENDMENT

This Agreement may be amended at any time with the concurrence of both parties. Any changes in the proposed budget or scope of work will be negotiated between the designated liaisons.

Amendments become a part of this Agreement only after the written amendment has been signed by both parties.

VII. TERM OF AGREEMENT

This Agreement becomes effective **upon signature and terminates June 30, 2020.**

This Agreement is subject to termination by either of the parties when thirty (30) days' written notice has been provided.

VIII. TERMINATION

In addition to the termination provisions in **Section VII** above, this Agreement may be terminated or suspended by either party upon the material non-compliance by the other party with any of its obligations under this Agreement. This Agreement may also be terminated at the discretion of either party upon 30 days' written notice to the other party.

IX. INDEMNIFICATION

To the extent permitted by the Oregon Constitution and subject to the liability limits stated in the Oregon Tort Claims Act, each party to this Agreement shall defend, indemnify and hold the other party harmless against all liability, loss, or expenses, and against all claims, actions or judgments based upon or arising out of damage or injury (including death) to persons or property to the extent caused by or resulting from its negligent act, errors, or omissions by the indemnifying party or its agents and employees in connection with the performance of this Agreement.

X. APPLICABILITY OF EXHIBITS

Exhibit C, OHP Required Federal Terms and Conditions are applicable only if Federal Funds are used to finance the compensation amount set forth in Exhibit B, Compensation. County and Contractor agree that the compensation amount set forth in Exhibit B, will be financed entirely with non-federal funds and the terms and conditions set forth in Exhibit C shall not be applicable to the services performed by Contractor under this agreement.

Exhibit D, Statement of General Conditions. To the extent applicable to the services provided by Contractor under this agreement, Contractor agrees to comply with the provisions set forth in Exhibit D. Notwithstanding, County and Contractor agree that: (i) the services provided by Contractor under this agreement do not require license, registration, or certification; and (ii) no services will be provided to clients of County.

This Agreement consists of ten (10) sections plus the following exhibits that by this reference are incorporated herein:

- Exhibit A Definitions
- Exhibit B Compensation
- Exhibit C OHP Required Federal Terms and Conditions (*Applicable only to the extent that Federal funds are used to pay the Contractor the compensation amount set forth in Exhibit B.*)
- Exhibit D Statement of General Conditions

(Signature page follows)

SIGNATURE PAGE

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

PORTLAND STATE UNIVERSITY

Authorized Signature

Date _____

Name / Title (Printed)

**COUNTY OF CLACKAMAS
BOARD OF COMMISSIONERS**

Commissioner: Jim Bernard, Chair

Commissioner: Sonya Fischer

Commissioner: Paul Savas

Commissioner: Martha Schrader

Commissioner: Ken Humberston

Signing on behalf of the Board:

Richard Swift, Director

Date _____

Health, Housing and Human Services

Approved as to form:

Kathleen Rastetter via email September 10, 2018

County Counsel

Date _____

September 20, 2018

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of U.S. Department of Housing & Urban Development (HUD)
Funding for Section 108 Loan Pool

Purpose/Outcomes	Board of County Commissioners' approval of a U.S. Department of Housing and Urban Development (HUD) Funding Approval of the Section 108 Loan Pool program.
Dollar Amount and Fiscal Impact	\$11,100,000 Section 108 Loan Guarantee funds to establish a loan pool for eligible community development projects.
Funding Source	U.S. Department of Housing and Urban Development Community Development Block Grant (CDBG) Section 108 program No County General Funds are involved.
Duration	20 years - 2019 to 2039
Previous Board Action	BCC Public Hearing on June 21, 2018. BCC approved submittal of a Section 108 application to HUD.
Strategic Plan Alignment	1. Build a strong infrastructure 2. Ensure safe, healthy and secure communities
Contact Person	Chuck Robbins, Community Development Director - (503) 655-8591
Contract No.	N/A

BACKGROUND:

The Housing and Community Development Division of the Health, Housing and Human Services Department requests the BCC's approval to enter into an agreement with HUD for \$11,100,000 of Section 108 Loan Pool funds. The U.S Department of Housing and Urban Development (HUD) Section 108 Loan Guarantee Program provides communities with a source of financing for large economic development, housing rehabilitation, public facility, and physical development projects. The funds can be used by a designated public entity to undertake eligible projects, or, alternatively, can be loaned to third party developers to undertake the projects.

HUD requires that current and future CDBG allocations be used as security for the loan. However, the primary goal is to award Section 108 funds to projects that have sufficient cash flow to repay the loan without any need for repayment from CDBG dollars. The size of the loan pool is calculated as 5 times the Clackamas County CDBG annual allocation which amounts to \$11.1 million.

The Housing and Community Development Division (HCD) Section 108 Loan program funds would create a loan pool for:

- Acquiring property for affordable housing

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- Rehabilitating publicly owned affordable housing projects
- Developing public facilities such as health centers, service centers and foodbanks

Section 108 follows the same regulatory and project eligibility requirements of the CDBG Program which can be found at this website: <https://www.hudexchange.info/programs/section-108/>

Section 108 funded projects/activities must comply with all CDBG rules including:

- At least 70% of funds directed to Low/Moderate Income (LMI) populations
- Environmental review
- Davis Bacon (prevailing wages)
- Uniform Relocation Act
- Office of Management and Budget circulars, as applicable
- Fair housing/equal opportunity
- Lead Based Paint

Each individual project loan that requests funds from the Section 108 Loan Pool will be submitted to the Board of County Commissioners for approval prior to submittal to HUD. Project loans would be funded by the Section 108 Program and loan repayments, including principle, interest and fees would be made by the borrowing entity.

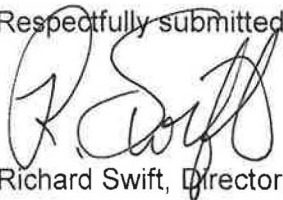
Each project loan would have a 20-year term with an initial interest rate that is variable based on the London Inter Bank Offered Rate (LIBOR) until the loan becomes permanent with a fixed interest rate based on U.S Treasury Yields with a current interest rate of approximately 3%.

RECOMMENDATION:

Staff recommends that the Board of County Commissioners take the following actions:

- 1) Authorize the Director of Health, Housing and Human Services to sign the HUD award on behalf of the Board;
- 2) Direct the Housing and Community Development Division staff to establish policies and procedures for the Section 108 Loan Pool program and work with County Finance to confirm accounting processes for loans and payments;
- 3) Direct the Housing and Community Development Division staff to collect and evaluate individual Section 108 project loan applications for approval by the Board.

Respectfully submitted,



Richard Swift, Director
Health, Housing & Human Services Department

Attachments:

HUD Award Letter
HUD Funding Approval/Agreement



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410-7000

OFFICE OF COMMUNITY PLANNING
AND DEVELOPMENT

AUG 23 2018

Mr. Jim Bernard
Clackamas County Commission Chair
2051 Kaen Road
Oregon City, OR 97045

Dear Chair Bernard:

Congratulations! I am pleased to inform you that the County of Clackamas's (hereafter, the "County") request for loan guarantee assistance under Section 108 of the Housing and Community Development Act of 1974, as amended, has been approved. Such assistance is to consist of the guarantee of notes or other obligations in the principal amount of \$11,100,000, plus interest thereon, which shall be issued to finance activities described in the County's application (B-18-UC-41-0001) for the Housing and Community Development Loan Fund project.

This offer of commitment ("Commitment") is subject, however, to the conditions specified in Item 8 of the Funding Approval (Form HUD-7082).

The first condition provides that in the event the County fails to submit notes or other obligations for inspection and guarantee by the Secretary of Housing and Urban Development (HUD) before December 31, 2019, the Commitment will expire as of such date.

The second condition provides that the repayment schedule for the indebtedness evidenced by the notes or other obligations (the "Guaranteed Loan") must be acceptable to HUD.

The third condition provides that the County shall provide additional security for the Guaranteed Loan and such additional security must be acceptable to HUD. The additional security shall be identified in the Contract for Loan Guarantee Assistance ("Contract"), specified by 24 CFR 570.705(b)(1), which will be executed at the time the guaranteed obligations are issued. The County's application and other supporting material identify the County's pledge of its interest in third party loans as additional security for the Guaranteed Loan.

In addition, the Contract shall provide that HUD may use existing pledged grants to prepay (or defease) the Guaranteed Loan if HUD determines that the standard pledge of future Community Development Block Grant ("CDBG") funds is insufficient to assure payment of amounts due thereunder. HUD reserves the right to require further security upon evaluation of the foregoing security arrangements and the County may substitute other collateral security for such arrangements, subject to HUD's approval of such substitution.

The fourth condition provides that prior to submitting notes or other obligations for inspection and guarantee by HUD, the County shall submit information required under Section 102(b) of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545). This information shall be submitted on Form HUD-2880 to HUD's Portland Field Office. A copy of Form HUD-2880 is enclosed for this purpose.

The fifth condition provides that the County is required to pay a fee of 2.365% of the principal amount of loan guaranteed under this Commitment to cover the credit subsidy costs as announced in the *Federal Register* on September 25, 2017 (82 FR 44649). This fee applies to all Section 108 guaranteed loan commitments issued in Fiscal Year 2018. The fee is applied only at the time of loan disbursements. The amount to be paid at that time is equal to 2.365% of the principal amount of the requested Guaranteed Loan advance. The fee may be paid directly by the County or, alternatively, it may be deducted from the Guaranteed Loan advance(s). If the fee is paid directly by the County, it may be paid from CDBG grant funds drawn down under the CDBG line of credit or with another source.

The sixth condition provides that the County and any County-assisted public entity shall not incur any obligations to be paid with guaranteed loan funds prior to the receipt of a written determination from the HUD Portland Field Office that either (i) each individual activity to be undertaken or supported with loan guarantee funds meets the eligibility requirements of 24 CFR 570.703, the national objective requirements of 24 CFR 570.208 and, if applicable, the public benefit standards of 24 CFR 570.209(b), or (ii) the Field Office has determined that the County's procedures for assuring compliance with the program requirements are acceptable.

The sixth condition provides that guaranteed loan funds may not be provided to a for-profit entity pursuant to 24 CFR 570.203(b) and 570.703(i) for assistance to carry out an economic development project unless such activity or project has been evaluated and selected in accordance with Appendix A to 24 CFR 570 – "Guidelines and Objectives for Evaluating Project Costs and Financial Requirements." This condition is necessary to ensure consistency in the treatment of the assistance for the activity described in the Section 108 application and the requirements that apply to grant funds pledged as security for the repayment of the Guaranteed Loan.

In addition to the special conditions cited above, the release of funds for the project to be carried out with loan guarantee assistance is conditioned upon compliance by the County with all applicable provisions of the HUD Environmental Review Procedures (24 CFR Part 58). The County is reminded that these Procedures include limitations on the commitment of HUD and non-HUD funds on an activity or project prior to HUD's approval of the request for release of funds and related certification of compliance with environmental requirements. Please refer to 24 CFR 58.22 for a description of the limitations and the entities to whom they apply.

Please furnish us, at the address specified below, your timetable for execution of the activities described in your application. These activities will be financed through a public offering of Section 108 obligations. If you need funds prior to the next public offering, please notify HUD at the address below and instructions for obtaining interim financing will be provided.

Please execute the three enclosed copies of the Funding Approval (Form HUD-7082) and return two copies to the Department of Housing and Urban Development, Financial Management Division, Room 7180, 451 Seventh Street, S.W., Washington, D.C. 20410. One copy should be retained for your files. The Funding Approval amends the Grant Agreement authorized by HUD on August 1, 2018, under the Funding Approval for grant number B-18-UC-41-0001 to include loan guarantee assistance. The Grant Agreement thereby incorporates this Funding Approval, the loan guarantee application, and Subpart M of the block grant regulations governing loan guarantees, as well as such agreements, schedules, and other documentation required for submission or execution in connection therewith.

Please do not hesitate to reach out if we can support you in the use of your Section 108 funds. Please contact Paul D. Webster, Director, Financial Management Division at (202) 402-4563, if you need assistance.

Sincerely,



Stanley Gimont
Deputy Assistant Secretary
for Grant Programs

Enclosures (2)

Funding Approval/Agreement


Title I of the Housing and Community
Development Act (Public Law 930383)

U.S. Department of Housing and Urban Development
Office of Community Planning and Development
Community Development Block Grant Program

HI-00515R of 20515R

1. Name of Grantee (as shown in item 5 of Standard Form 424) COUNTY OF CLACKAMAS, OR	3. Grantee's 9-digit Tax ID Number	4. Date use of funds may begin (mm/dd/yyyy)
2. Grantee's Complete Address (as shown in item 5 of Standard Form 424) 2051 Kaen Road #245 Oregon City, OR 97045	5a. Project/Grant No. 1 B-18-UC-41-0001	6a. Amount Approved
	5b. Project/Grant No. 2	6b. Amount Approved
	5c. Project/Grant No. 3	6c. Amount Approved

Grant Agreement: This Grant Agreement between the Department of Housing and Urban Development (HUD) and the above named Grantee is made pursuant to the authority of Title I of the Housing and Community Development Act of 1974, as amended, (42 USC 5301 et seq.). The Grantee's submissions for Title I assistance, the HUD regulations at 24 CFR Part 570 (as now in effect and as may be amended from time to time), and this Funding Approval, including any special conditions, constitute part of the Agreement. Subject to the provisions of this Grant Agreement, HUD will make the funding assistance specified here available to the Grantee upon execution of the Agreement by the parties. The funding assistance specified in the Funding Approval may be used to pay costs incurred after the date specified in item 4 above provided the activities to which such costs are related are carried out in compliance with all applicable requirements. Pre-agreement costs may not be paid with funding assistance specified here unless they are authorized in HUD regulations or approved by waiver and listed in the special conditions to the Funding Approval. The Grantee agrees to assume all of the responsibilities for environmental review, decision making, and actions, as specified and required in regulations issued by the Secretary pursuant to Section 104(g) of Title I and published in 24 CFR Part 58. The Grantee further acknowledges its responsibility for adherence to the Agreement by sub-recipient entities to which it makes funding assistance hereunder available.

U.S. Department of Housing and Urban Development (By Name) Stanley Gimont		Grantee Name COUNTY OF CLACKAMAS, OREGON	
Title Deputy Assistant Secretary for Grant Programs		Title	
Signature 	Date (mm/dd/yyyy) AUG 23 2018	Signature	Date (mm/dd/yyyy)
7. Category of Title I Assistance for this Funding Action (check only one) <input type="checkbox"/> a. Entitlement, Sec 106(b) <input type="checkbox"/> b. State-Administered, Sec 106(d)(1) <input type="checkbox"/> c. HUD-Administered Small Cities, Sec 106(d)(2)(B) <input type="checkbox"/> d. Indian CDBG Programs, Sec 106(a)(1) <input type="checkbox"/> e. Surplus Urban Renewal Funds, Sec 112(b) <input type="checkbox"/> f. Special Purpose Grants, Sec 107 <input checked="" type="checkbox"/> g. Loan Guarantee, Sec 108	8. Special Conditions (check one) <input type="checkbox"/> None <input checked="" type="checkbox"/> Attached	9a. Date HUD Received Submission (mm/dd/yyyy) 9b. Date Grantee Notified (mm/dd/yyyy) 9c. Date of Start of Program Year (mm/dd/yyyy)	10. check one <input checked="" type="checkbox"/> a. Orig. Funding Approval <input type="checkbox"/> b. Amendment Amendment Number
	11. Amount of Community Development Block Grant a. Funds Reserved for this Grantee b. Funds now being Approved c. Reservation to be Cancelled (11a minus 11b)		
12a. Amount of Loan Guarantee Commitment now being Approved \$11,100,000		12b. Name and complete Address of Public Agency	
Loan Guarantee Acceptance Provisions for Designated Agencies: The public agency hereby accepts the Grant Agreement executed by the Department of Housing and Urban Development on the above date with respect to the above grant number(s) as Grantee designated to receive loan guarantee assistance, and agrees to comply with the terms and conditions of the Agreement, applicable regulations, and other requirements of HUD now or hereafter in effect, pertaining to the assistance provided it.		12c. Name of Authorized Official for Designated Public Agency	
		Title	
		Signature	

HUD Accounting use Only

Batch	TAC	Program Y	A	Reg	Area	Document No.	Project Number	Category	Amount	Effective Date (mm/dd/yyyy)	F
	153										
	176										
		Y					Project Number		Amount		
		Y					Project Number		Amount		
Date Entered PAS (mm/dd/yyyy)	Date Entered LOCCS (mm/dd/yyyy)	Batch Number	Transaction Code	Entered By	Verified By						

8. Special Conditions.

- (a) In the event the County of Clackamas (the "County") fails to submit notes or other obligations for inspection and guarantee by the Secretary of Housing and Urban Development (the "Secretary") before December 31, 2019, the commitment will terminate and expire as of such date.
- (b) The repayment schedule for the County's debt obligation, as defined in 24 CFR 570.701, must be acceptable to the Secretary.
- (c) Pursuant to 24 CFR 570.705(b)(3), the County shall provide additional security for the Guaranteed Loan and such additional security must be acceptable to the Secretary. The additional security shall be identified in the Contract for Loan Guarantee Assistance specified by 24 CFR 570.705(b)(1), which will be executed at the time the guaranteed obligations are issued.
- (d) Prior to submitting notes or other obligations for inspection and guarantee by the Secretary, the County shall submit information required under Section 102(b) of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545). This information shall be submitted on Form HUD-2880 to HUD's Portland Field Office.
- (e) The County is required to pay a fee of 2.365% of the principal amount of loan guaranteed and advanced under this Commitment to cover the credit subsidy costs as announced in the *Federal Register* on September 25, 2017 (82 FR 44649).
- (f) The County and any County-assisted public entity shall not incur any obligations to be paid with guaranteed loan funds prior to the receipt of a written determination from the HUD Portland Field Office that either (i) each individual activity to be undertaken or supported with loan guarantee funds meets the eligibility requirements of 24 CFR 570.703, the national objective requirements of 24 CFR 570.208 and, if applicable, the public benefit standards of 24 CFR 570.209(b), or (ii) the Field Office has determined that the County's procedures for assuring compliance with the program requirements are acceptable.
- (g) Guaranteed loan funds may not be provided to a for-profit entity pursuant to 24 CFR 570.203(b) and 570.703(i) for assistance to carry out an economic development project unless such activity or project has been evaluated and selected in accordance with Appendix A to 24 CFR 570 – "Guidelines and Objectives for Evaluating Project Costs and Financial Requirements." This condition is necessary to ensure consistency in the treatment of the assistance for the activity described in the Section 108 application and the requirements that apply to grant funds pledged as security for the repayment of the Guaranteed Loan.

September 20, 2018

Board of County Commissioner
Clackamas County

Members of the Board:

Approval of Agreement #18569 with
Ride Connection, Inc. to Provide Funding for Rides Provided by
Volunteer Drivers under the Ride Together Program

Purpose/Outcomes	Social Services-Transportation Reaching People and Senior Center based transportation services to assist older and disabled county residents in meeting their transportation needs to conduct their personal business, grocery shop, medical and/or other appointments.
Dollar Amount and Fiscal Impact	Agreement Amount \$5,803. The contract is funded through the agreements with State of Oregon, Elderly and Disabled Transportation Fund – Federal Transit Administration 5310 Grant.
Funding Source	Federal Transit Administration 5310 Grant. No County General Funds are involved
Duration	Effective July 1, 2018 and terminates on June 30, 2019
Previous Board Action	None
Strategic Plan Alignment	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 needs of older adults in the community.
Contact Person	Brenda Durbin, Director, Social Services Division 503-655-8641
Contract No.	8991

BACKGROUND:

The Social Services Division of the Health, Housing and Human Services request approval of Agreement #18569 with Ride Connection, Inc. This contract provides funding for rides provided throughout the County by volunteer drivers of the Clackamas County Transportation Consortium. This Agreement provides continued funding for FY2018-19 to pay a mileage reimbursement stipend to volunteer drivers of the Ride Together program for the transportation services they provide to Clackamas County seniors and persons with disabilities. These funds help residents to remain independent and engaged in their community as long as possible.

Any disabled adult or person over the age of 60 living in Clackamas has access to transportation services through either their local Adult/Senior Community Centers or the Social Services Transportation Reaching People (TRP) program. The Ride Together program provide an additional flexible resource to these residents. Someone in need of transportation services who has a friend or neighbor who is willing to meet some of their transportation needs can register with the Social Services TRP program. After completing a background check and training, the driver can be reimbursed for approved mileage. The Rider and Driver coordinate the dates and times of these rides which provides the flexibility to meet the Riders evening and weekend transportation needs that other

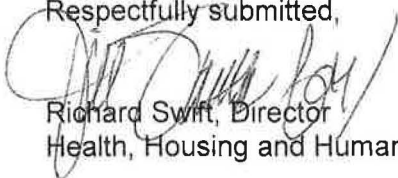
programs cannot currently provide. These volunteer drivers undergo the same screening and receive the same training as all the other Clackamas County Transportation Consortium volunteer and paid drivers.

This contract is late due to Ride Connection not being able to release agreements/modifications to its sub-contractors until their funding source released their contract and approved the Subrecipient agreements issued by Ride Connection. This resulted in the delay of Ride Connection sending out its contracts for FY18-19. County Council reviewed and approved this agreement on 9/10/187. No County General 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.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Richard Swift", is written over the printed name and title.

Richard Swift, Director
Health, Housing and Human Services

**SERVICES AGREEMENT #18569
BETWEEN
RIDE CONNECTION INC. and Clackamas County Consortium**

PARTIES:

1. Ride Connection, Inc. ("Ride Connection" or "Recipient"), and
2. Clackamas County Consortium ("Subrecipient")

RECITALS:

- A. In the reauthorization of the Transportation Bill (MAP-21) signed into law on July 6, 2012, federal funding was established for programs that meet the transportation needs of older adults and people with disabilities when the transportation service provided is unavailable, insufficient, or inappropriate to meeting these needs.
- B. Pursuant to federal requirements, a selection process has been conducted and Subrecipient was selected for a project through this process.
- C. Ride Connection and Subrecipient enter into this Subrecipient Agreement (the "Agreement") for the purpose of procuring Subrecipient's services, for which payment in part shall be from 5310 Funds.

AGREEMENTS:

1. General

- A. Scope of Agreement - This Agreement contains the terms and conditions that governs all services, and deliverables, (the "Services") to be performed by Subrecipient during the Term of this Agreement, which shall be amended as needed for one or more projects. However, execution of this Agreement does not obligate Ride Connection to award any Services to Subrecipient, other than the initial scope of Services attached in Exhibit A.
 - (1) This Agreement consists of this document, all Exhibits or other attachments, and other documents referenced herein and incorporated by this reference. Subrecipient shall comply with all applicable federal laws, regulations, executive orders, circulars, rules, policies, procedures and directives, whether or not expressly set forth in this Agreement, including but not limited to the following, which are incorporated into and made a part hereof: (1) the terms and conditions applicable to a "Recipient" set forth in the Prime Contract; (2) OMB Circular 2 CFR 200 (3) FTA Master Agreement, (4) Annual Certifications and Assurances, (5) FTA C 9070.1G.
- B. Scope of Services and Changes - Subrecipient agrees that it is under a continuing obligation to comply with the foregoing requirements, as they be modified or amended from time to time. Subrecipient further agrees to execute the funded activities described in Exhibit A,

in accordance with the terms of those requirements, as they may be amended during the term of this Agreement. This Agreement is subject to any amendments required as a result of agreement between TriMet and Ride Connection or pass-through obligations affecting Subrecipient's scope of Services, and is hereby amended to incorporate those changes. In the event any change to the Services as requested by Ride Connection results in a material increase or decrease in the Services, then an equitable adjustment in the total compensation owed to Subrecipient by Ride Connection shall be determined by Ride Connection and subsequent payments adjusted accordingly. Similarly, if any change to the Services results in a material change to the project schedule, it shall also be accordingly determined and adjusted by Ride Connection after consultation with Subrecipient.

- C. Schedule - Subrecipient and Ride Connection agree that time is of the essence for all activities comprising the Services under this Agreement.
- D. Audit Right - Subrecipient agrees that Ride Connection rights of audit and review under Paragraph 2 of this Agreement specifically include Subrecipient's financial records, management and program systems, and any associated records. Subrecipient shall comply with any monitoring and audit requirements established by Ride Connection pertaining to this Agreement.
 - (1) In the event that any audit or review of Subrecipient's records reveals a variance of Five Percent (5%) or more in cost overruns or charges in excess of any agreed upon price, then Ride Connection's costs of audit or review shall be reimbursed immediately by Subrecipient.
- E. Subcontracts - Subrecipient shall not enter into subcontracts for performance of Services under this Agreement except as may be specifically authorized by this Agreement in the attached and incorporated Exhibit A. Subrecipient shall not be relieved of any responsibility for performance of Subrecipient's duties under this Agreement, regardless of any subcontract entered into. Subrecipient agrees that any subcontractor performing services under this Agreement shall comply with the requirements of this Agreement including FTA third-party agreement contract provisions and requirements, as may be amended, and shall enter into a written agreement with each subcontractor requiring the incorporation of those requirements as applicable to each tier. Any delay or defect in the performance of any part of Subrecipient's Services shall not relieve Subrecipient of its primary obligation under this Agreement to ensure timely and satisfactory performance of all the Services. Any subcontractor delay or defect in performance under this Agreement shall be subject to the indemnification provisions of Section 7.
 - (1) Subrecipient acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies" 49 CFR Part 31, apply to its actions pertaining to the Services under this Agreement. Upon execution of this Agreement, Subrecipient certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make or cause to be made pertaining to this Agreement. In addition to other penalties that may be applicable, Subrecipient acknowledges that if it makes, or causes to be made a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the

right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on Subrecipient to the extent the Federal Government deems appropriate.

- (2) Subrecipient also acknowledges that if it makes, or causes to be made a false, fictitious or fraudulent claim, statement, submission, or certification to the Federal Government under an Agreement connected with a project that is financed in whole or part with Federal assistance awarded by FTA under 49 U.S.C. Chapter 53 or any other Federal law, the Government reserves the rights to impose penalties of 18 U.S.C. 1001 and 49 U.S.C 5323(1) on Subrecipient, to the extent the Federal Government deems appropriate.
- (3) Subrecipient agrees to include the above two clauses in each subcontract it awards under this Agreement financed in whole or in part with FTA funds. It is further agreed that the clauses shall not be modified except to identify the subcontractor who will be subject to the provisions.

- G. Drug-Free Covered Agreement - This Agreement is a covered transaction for purposes of 49 CFR Part 29. As such, Subrecipient is required to verify that none of Subrecipient, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945. By signing this Agreement, Subrecipient makes a material representation of fact relied upon by Ride Connection that Subrecipient has complied with 49 CFR Part 29. If it is later determined that Subrecipient knowingly rendered an erroneous representation of compliance with 49 CFR Part 29, in addition to and without limitation of the remedies available to Ride Connection, TriMet and the Federal Government may pursue any available remedies, including but not limited to suspension and/or debarment. In addition, Subrecipient is required to comply with 49 CFR 29, Subpart C throughout the term of this Agreement, and must include the requirement to comply with 49 CFR Part 29, Subpart C in any lower tier covered transaction it enters into.

2. Inspection of Records and Services

- A. Recordkeeping Term - Subrecipient shall maintain intact and readily accessible a complete set of records relating to this Agreement for six (6) years after the date of transmission of the final expenditure report for the Project or if expiration is later, upon expiration of the Agreement, including but not limited to all data, documents, reports, records, contracts and supporting materials as the Federal government, TriMet or Ride Connection may require. Subrecipient shall permit Ride Connection, TriMet, ODOT or the Secretary of State of the State of Oregon, the U.S. Department of Transportation, and the Comptroller General of the United States, and all of their respective authorized representatives, to inspect and audit all work, Services, materials, payrolls, books, accounts, and other data and records of Subrecipient relating to its performance under this Agreement until the expiration of six (6) years after the date of transmission of the final expenditure report for the Project or expiration of the Agreement, if expiration is later. Upon request by Ride Connection, Subrecipient shall provide Ride Connection access to and shall provide a copy of records maintained by Subrecipient under this Agreement.

- B. Annual Self-Audit - Subrecipient shall follow the requirements stated in the Single Audit Act, 31 U.S.C. 7501 et seq. If Subrecipient expends Federal funds in excess of \$750,000 from all sources in its fiscal year, Subrecipient is subject to audit conducted in accordance with OMB Circular 2 CFR 200, Audits of States, Local governments, Non-profit Institutions. Subrecipient shall, at Subrecipient's own expense, submit to Ride Connection, 9955 NE Glisan St, Portland, OR 97220, an annual audit covering the funds expended under this Agreement and shall submit the annual audit of any subcontractor of Subrecipient responsible for the financial management of funds received under this Agreement.
- (1) Subrecipient shall at Subrecipient's expense, submit to Ride Connection, 9955 NE Glisan St, Portland, OR 97220, a copy of any annual audit covering the funds expended under this Agreement by Subrecipient or any subcontractor of Subrecipient receiving funds as a result of this Agreement that is performed due to state law or regulation or conducted as an independent activity. Subrecipient shall also at its expense, submit to Ride Connection at the foregoing address, a copy of the management letter that accompanies an annual audit covering the funds expended under this Agreement by Subrecipient or any subcontractor of Subrecipient receiving funds as a result of this Agreement.
- C. Audit Passthrough to Subcontractors - Subrecipient further agrees to include in any third party contract under this Agreement a provision to the effect that the contractor must retain and grant Ride Connection, TriMet, ODOT, the U.S. Department of Transportation, and the Comptroller General of the United States, or any of their authorized representatives access to all books, documents, papers and records directly pertinent to the contract, for the purpose of making audit, examination, excerpts and transcriptions, until the expiration of six (6) years (three years for federal retention requirements and an additional three years for state retention requirements) after final payment under the contract or expiration of the contract if expiration is later.
- (1) The periods of access and examination described in subparagraphs A and B of this Paragraph for records that relate to (1) disputes between Ride Connection and Subrecipient, (2) litigation or settlement of claims arising out of the performance of this contract, or (3) costs and expenses of this Agreement as to which exception has been taken by the Comptroller General or any of his or her duly authorized representatives, shall continue until all disputes, claims, litigation, appeals and exceptions have been resolved. Subrecipient agrees to include in any third party contract under this Agreement a provision to this effect.
- D. The foregoing provisions are in addition to and not in lieu of any other applicable federal or state laws, regulations, rules, circulars or directives. Subrecipient agrees to include in any third party contract under this Agreement a provision to this effect.

3. Reporting Requirements

- A. Monthly reports shall be due on the 20th day after the end of the preceding month.
- B. Reports shall include complete information required by FTA Circular 5010.1C, Chapter 1,

Section (5) Reporting Requirements, particularly the status of grant activity line items, budget and schedule changes, milestone revisions or cost variances, outstanding claims, change orders and other information that the circular may require. Ride Connection may require additional reporting information from the Subrecipient.

4. Compensation

- A. Agreed Price - The maximum funding to be disbursed to Subrecipient under this Agreement is \$5,803.00. Ride Connection shall pay Subrecipient for full, complete, and satisfactory performance of the Services, upon Ride Connection's receipt of payment from TriMet for Subrecipient's Services, at the price and/or rates mutually agreed by the parties under this Agreement for the applicable project. No other costs, rates, or fees shall be payable to the Subrecipient. Except as set forth in this Agreement, Subrecipient shall bear sole responsibility for all additional expenses incurred in connection with its performance of the Services.
- B. Payment Terms - Subrecipient shall submit to Ride Connection monthly invoices and any other documentation requested by Ride Connection for payment at such times as will enable Ride Connection to apply for payment from TriMet in a timely manner. When required by Ride Connection, and as a condition precedent to any payment, and particularly final payment, Subrecipient shall provide, in a form satisfactory to Ride Connection, lien releases, claim waivers, and affidavits of payment from Subrecipient, and its lower-tier subcontractors and suppliers of any tier, for any portion of Subrecipient's Services.
- C. Withholding - Ride Connection may withhold payment of funds or offset future payments against funds already paid to Subrecipient if the funds are not being used in accordance with this Agreement, all required reporting has not been submitted, or there are any unresolved audit findings relating to the Subrecipient's performance, subject to the dispute resolution process in section 18. Subrecipient shall assure that funds allocated hereunder are used only for the purposes permitted, and shall, upon breach of conditions that require Ride Connection to reimburse funds to TriMet or otherwise incur costs from TriMet withholding of funds, hold harmless and indemnify Ride Connection for an amount equal to the funds required to be repaid or withheld plus any additional costs or expenses incurred by Ride Connection. In the event a creditor imposes any lien or claim for labor, fringe benefits, taxes, supplies, materials, equipment rental or other charges against the Services covered by this Agreement, thereby legally encumbering the Services, the amount of such obligation may be deducted by Ride Connection from any payment or payments, including retainage, made under this Agreement.

5. Independent Contractor

Subrecipient is an independent contractor for all purposes under this Agreement, and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement, including but not limited to workers compensation, unemployment taxes and state and federal income tax withholdings. Subrecipient shall have sole control and supervision over the manner in which services are performed, subject only to consistency with the terms of this Agreement. Neither Subrecipient, nor its officers, directors,

employees, subcontractors or drivers, are officers, employees or agents of Ride Connection as those terms are used in ORS 30.265. Subrecipient, its directors, officers, employees, subcontractors or drivers shall not hold themselves out either explicitly or implicitly as officers, employees or agents of Ride Connection for any purpose whatsoever. Nothing in this Agreement shall be deemed to create a partnership, franchise or joint venture between the parties.

6. Confidential Information

Subrecipient agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Subrecipient uses in maintaining the confidentiality of its own confidential information, but no less stringent as reasonable care, and shall not, without the disclosing entity's prior written consent, 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 the provision of Services hereunder. Subrecipient shall advise Ride Connection immediately if Subrecipient learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Section, and Subrecipient shall, at its expense, cooperate with Ride Connection in seeking injunctive or other equitable relief against any such person.

7. Indemnification

- A. Indemnified Conditions - Subject to the Oregon Tort Claims Act and the Oregon Constitution, Subrecipient agrees to fully indemnify, defend, and hold harmless the State of Oregon, TriMet, Ride Connection and their directors, officers, employees and agents (the "Indemnitees") from and against all claims, suits, actions of whatsoever nature, damages or losses, and all expenses and costs incidental to the investigation, resulting from or arising out of the activities of Subrecipient, its officers, employees or agents under this Agreement, to the fullest extent permitted by law, including but not limited to the following:
- (i) Bodily injury or death to any person;
 - (ii) Property damage to any personal or real property owned by anyone;
 - (iii) Failure to comply with any health and safety, corporate or administrative ordinances, regulations, orders, permits, licenses, and laws;
 - (iv) Infringement of any intellectual property or other third party rights;
 - (v) Discharge or causing the discharge of any hazardous or polluting substance; and
 - (vi) Liens, claims, demands, or suits of whatever nature brought by Subrecipient's laborers, subcontractors, material and equipment providers, or other creditors to enforce a right of any kind made upon or against the Services or the real property where the Services are performed.
- B. Indemnity by Subcontractors - Subrecipient agrees to include in any third party contract under this Agreement a provision to the effect that the contractor shall fully indemnify, hold harmless and defend, and hold harmless the State of Oregon, TriMet, Ride Connection

and their directors, officers, employees and agents (the "Indemnitees") from and against all claims, suits, actions of whatsoever nature, damages or losses, and all expenses and costs incidental to the investigation, resulting from or arising out of the activities of such subcontractor, its officers, employees or agents under the contract between Subrecipient and such subcontractor procured pursuant to this Agreement.

- C. Indemnitee Consent - Subrecipient shall not defend any claim in the name of the State of Oregon, any Agency of the State of Oregon, TriMet, or Ride Connection, not purport to act as legal representative of same, without the prior written consent of the Oregon Attorney General, TriMet, or Ride Connection.
- D. Limitation on Indemnification - Subrecipient's indemnification above shall not include any liability to the extent caused by or resulting from the concurrent negligence of any Indemnitees. Any legal limitations now or hereafter in effect affecting the validity or enforceability of the indemnity, defense and hold harmless obligations assumed by Subrecipient pursuant to this Agreement shall operate to amend the Subrecipient's obligations only to the minimum extent necessary for the indemnity, defense and hold harmless contractual provision to conform with the requirements of such limitations, and as so modified, the obligations shall continue in full force and effect.
- D. No Consequential Damages – Neither Ride Connection nor any of its officers, employees, directors, and agents shall have any liability to Subrecipient regardless of the theory of recovery, including breach of contract or negligence, to the other party for any indirect, incidental, special, or consequential damages, including but not limited to loss of revenue or profit, whether actual or anticipated, loss of use, failure to realize anticipated savings, loss of or damage to data or other commercial or economic loss.

8. Workers Compensation

Subrecipient, its subcontractors, if any, and all employers working under this Agreement are either subject employers under the Oregon Workers Compensation Law and shall comply with ORS 656.017, which requires them to provide workers compensation coverage for all their subject workers, or employers that are exempt under ORS 656.126(2). Subrecipient expressly waives any statutory or common law immunity, in accordance with the Oregon Revised Statutes, Vol. 14, Section 656, Revised Code of Washington, Title 51, as amended, or any other applicable laws or regulations that would otherwise shield an employer from insurance subrogation or other claims.

9. Insurance

- A. While this Agreement is in effect, Subrecipient agrees that it shall maintain in effect the insurance coverage set forth below, as well as to require any subcontractors it uses to agree to comply with the insurance requirements provided below. Failure of Ride Connection to demand such certificate or other evidence of full compliance with these insurance requirements, or failure of Ride Connection to identify a deficiency from evidence that is provided shall not be construed as a waiver of Subrecipient's obligation to require such insurance from its subcontractors.

Clackamas County is self-insured for workers' compensation, and general, auto and professional liability, in accordance with the provisions of ORS 30.272 (Tort Claims Act) and ORS 656.403 (Workers' Compensation). The County maintains an insurance fund from which to pay all costs and expenses relating to claims for which it is self-insured. The County's exposure for general, auto and professional liability is limited by ORS 30.272 to: \$115,800/\$579,000 property damage and \$1,412,000 total damages per occurrence.

B. Subrecipient's subcontractors, if any, shall be responsible for payment of all respective premiums and deductibles. Insurance shall be maintained of the types and in the amounts described below, and shall be from carriers acceptable to Ride Connection:

- (1) Commercial General Liability (CGL) Insurance covering bodily injury and property damage with a limit of not less than US\$1,000,000 each occurrence, and aggregate of US\$2,000,000.
- (2) Business Auto Liability Insurance covering bodily injury and property damage with a limit of not less than \$2,000,000 each accident. Such insurance shall cover liability arising out of the use of any auto (including owned, hired, and non-owned autos).
- (3) Workers Compensation and Employer's Liability Insurance. The employer's liability limit shall not be less than \$1,000,000 each accident for bodily injury by an accident and \$1,000,000 each employee for bodily injury by disease. The workers compensation limit shall be equivalent to or better than the Oregon statutory limits.
- (4) Sexual Abuse/Molestation coverage with limits no less than \$500,000 per occurrence/aggregate.
- (5) Tail Coverage, if any of the required insurance policies is on a "claims made" basis, such as professional liability insurance, the subcontractor 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 sub agreement for subcontractors, for a minimum of 24 months following the later of: (i) the Subrecipient's completion and TriMet's acceptance of all services required under this Agreement, and the subcontractors completion and Subrecipient's acceptance of all services required under the sub agreement or, (ii) the expiration of all warranty periods provided under the sub agreement with respect to the subcontractor. Notwithstanding the foregoing 24-month requirement, if the subcontractor 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 subcontractor may request and TriMet may grant approval of the maximum "tail" coverage period reasonably available in the marketplace. If TriMet approval is granted, the subcontractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.
- (6) The insurance required under this Paragraph shall:
Include Ride Connection, TriMet, ODOT, the State of Oregon, the Federal Transit Administration, and each of their respective directors, officers, agents, elected

officials, and employees as additional insureds with respect to work or operations connected with the Agreement, and

The Subrecipient or its insurer must provide 30 days' written notice to Ride Connection before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

10. Claims, Notice

- A. Notice Period - Subrecipient shall provide written notice of any claim under this Agreement to Ride Connection within five (5) business days of the circumstances giving rise to the claim or within sufficient time to allow Ride Connection to give notice to TriMet pursuant to the Prime Contract (whichever is sooner).
- B. Notice Content - Any claim by Subrecipient must set forth in detail the entitlement and quantum basis for Subrecipient's claim with supporting data and/or the entitlement basis to Ride Connection.
- C. Requirement to Continue Services - Whether or not Subrecipient has a claim pending with Ride Connection, Subrecipient shall continue performing Services under this Agreement. Any suspension of Services by Subrecipient, without written consent by Ride Connection, may be considered by Ride Connection as a material breach of this Agreement. Ride Connection does not waive the requirement for timely written notice and/or timely written submission of the Statement of Claim unless Ride Connection's waiver is unequivocal, explicit, and in writing.

11. Termination

Ride Connection may terminate this Agreement, in whole or in part, effective upon delivery of written notice to Subrecipient, or at such later date as may be established by Ride Connection, under any of the following conditions:

- A. Subrecipient fails to provide services called for by this Agreement within the time specified herein or any extension thereof;
- B. Subrecipient fails to comply with or perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from Ride Connection fails to correct such failures within 10 days or such longer period as Ride Connection may authorize;
- C. Ride Connection fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for the work provided in this Agreement, or if Ride Connection determines to terminate for its own convenience;
- D. Any laws, regulations, rules or guidelines are modified, changed or interpreted in such a way that financial assistance or purchase of equipment provided for in this Agreement is no longer allowable or is no longer eligible for funding proposed by this Agreement;

- E. Both parties agree that continuation of the Project would not produce results commensurate with the further expenditure of funds; or
- F. Subrecipient takes any action pertaining to this Agreement without the approval of Ride Connection and which under the provisions of this Agreement would have required the approval of Ride Connection.
- G. Subrecipient may terminate this Agreement, in whole or in part, upon 30 days written notice to Ride Connection

Any termination of this Agreement shall not prejudice any rights or obligations accrued to the parties prior to termination.

12. Compliance with Laws

Federal laws and regulations - In addition to those elsewhere specified, Subrecipient shall comply with any applicable federal, state and local laws, rules and regulations applicable to the project hereunder, including but not limited to the following: all federal, state and local statutes, regulations, administrative rules, executive orders, ordinances and other laws applicable to the Services. Subrecipient expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable: (i) Title VI of the Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659a.142; (iv) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations; (v) the Clean Air Act (42 U.S.C. 7401-7671q); (vi) the Water Pollution Control Act as amended (33 U.S.C. 1251-1387); (vii) Executive Order 11738; (viii) Environmental Protection Agency regulations (40 CFR part 15); and (ix) and all applicable standards, orders, regulations and administrative rules established pursuant to the foregoing laws.

Payment of taxes and business license - Subrecipient shall comply with all federal, state, and local employment and labor laws and regulations in all aspects of its operations, including, but not limited to, all applicable federal, state, or local labor or employment laws including but not limited to laws and regulations regarding hiring, training, assignments, promotions, discipline and/or discharge, including but not limited to the Services Contract Act ("SCA"), for which it is Subrecipient's sole responsibility to determine if the SCA applies to it and the Services. Ride Connection may from time to time at its sole discretion seek and obtain a certification from Subrecipient that it is in compliance with the foregoing, and Subrecipient will provide, upon reasonable request by Ride Connection, such documents and supporting materials to evidence Subrecipient's compliance with this Section.

ODOT Conflict of Interest Guidelines - If required applicable by ODOT, Subrecipient and its subcontractors shall comply with the ODOT Conflict of Interest ("COI") Guidelines and COI Disclosure Form. Subrecipient and, to the best of the undersigned's information, knowledge and Subrecipient's Associates (as defined in the COI Guidelines) are in compliance with and have no disclosures required per the COI Guidelines (available at the following Internet address: <http://www.oregon.gov/ODOT/CS/OPO/Pages/ae.aspx>); Subrecipient also confirms that no

Federal appropriated funds have been paid or will be paid, by or on behalf of Subrecipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

13. Term

This Agreement shall begin on 7/1/2018 and shall remain in effect through 6/30/2019 unless terminated sooner under the provisions of this Agreement.

14. Communications

All communications between the parties regarding this Agreement shall be directed to the parties' respective Project Managers as indicated below:

Ride Connection:
Dean Orr
Ride Connection
9955 NE Glisan St.
Portland, OR 97220

Subrecipient:
Stefanie Reid
Clackamas County Consortium
2051 Kaen Rd
Oregon City, OR 97045-1819

15. No Third Party Beneficiary

Ride Connection and Subrecipient are the only parties to this Agreement and, as such, are the only parties entitled to enforce its terms. Nothing in this Agreement gives or shall be construed to create or provide any legal right or benefit, direct, indirect or otherwise to any other party unless that party is individually identified by name herein and expressly described as an intended beneficiary of the terms of this Agreement.

16. Assignment

Subrecipient may not assign, delegate or subcontract any of its rights or obligations under this Agreement to any other party without the prior written consent of Ride Connection. Any assignment, delegation or subcontract in violation of this paragraph shall be null and void, and shall constitute grounds for immediate termination by Ride Connection.

17. Governing Law

This Agreement shall be governed by the laws of the State of Oregon, to the express exclusion of all other choice of law alternatives.

18. Dispute Resolution

A. Executive Negotiation - The Parties shall attempt in good faith to resolve any dispute

arising out of or relating to this Agreement, or any breach hereof or any Services performed hereunder, promptly by negotiation between executives who have authority to settle the controversy. Any party may give the other party written notice of any dispute not resolved during the normal course of business. Such notice shall include a statement of that party's position and documentation supporting that parties claim and the name and title of the executive who will be representing that party and any other person who will accompany the executive. The receiving party shall respond in kind within five (5) days of the date of notice. Within ten (10) days after delivery of the initial notice, the executives of both parties shall meet at a mutually acceptable time and place and use good faith efforts to resolve the dispute. If dispute is not then resolved, either party may give the other written notice that these executive negotiations are concluded. Negotiations pursuant to this Section shall be confidential and shall be treated as compromise and settlement negotiations for purposes of Law and rules of evidence. Time requirements herein may be modified upon mutual written consent of the parties.

- B. Mediation - In the event that the parties are unable to settle the dispute through direct negotiations as set forth above, all remaining controversies or claims shall then be submitted to mediation within ten (10) days from written notice of concluded negotiations following the Mediation Rules published by the Arbitration Service of Portland, Inc. Unless the parties agree otherwise, mediation shall be held in Portland, Oregon. This Agreement to mediate and any other agreement or consent to mediate entered into in accordance with this Agreement shall be specifically enforceable under the prevailing law of any court having jurisdiction.
- C. Arbitration - In the event that the parties are unable to settle the dispute through negotiation and mediation as set forth above, either party may seek final resolution through binding arbitration pursuant to the Commercial Arbitration Rules of the Arbitration Service of Portland, Inc. for one arbitrator. The arbitrator's decision shall be binding, final, and enforceable by any court with appropriate jurisdiction in accordance with the Rules of the Arbitration Serviced of Portland, Inc.
- D. Costs and Award – The prevailing party in any arbitration shall be eligible for the award of all dispute resolution costs and expenses, including attorney's fees through all tiers of dispute resolution, including meditation, if so awarded by the arbitrator or court of jurisdiction.

19. Entire Agreement/Authority

This Agreement, exhibits, and any other attachments constitute the entire Agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made shall be effective only in the specific instance and for the specific purpose given. The failure of Ride Connection to enforce any provision of this Agreement shall not constitute a waiver by Ride Connection of that or any other provision. The individuals signing below represent and warrant that they have authority to bind the party for which they sign.

20. Severability

If any provision of this Subcontract will be held to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable. If a court or arbitrator finds that any provision of this Subcontract is invalid or unenforceable, but that by limiting such provision, it would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited.

21. Surviving Provisions

Notwithstanding termination or expiration of this Agreement, the following provisions shall survive and continue to be in full force and effect: 1D (Audit); 2A (Recordkeeping); 6 (Confidential Information); 7 (Indemnification); 8 (Workers Compensation Insurance); 9 (Insurance); 17 (Governing Law); 18 (Dispute Resolution); and 22 (Surviving Provisions).

22. Prompt Payment

Subrecipient shall make payment promptly, as due, to all persons supplying to the Subrecipient labor or material for the performance of the work provided for in the contract. At a minimum, Subrecipient shall pay subcontractors no later than thirty (30) days from receipt of payment from Ride Connection. Subrecipient shall not hold retainage from subcontractors.

23. Agreement Documents

This Agreement consists of this document and the following documents, all of which are attached hereto and incorporated herein reference:

- Exhibit A: Scope of Work
- Exhibit B: Federal Terms and Conditions
- Exhibit C: Funding Information
- Exhibit D: Lobbying Certificate (signature required)
- Exhibit E: Nondiscrimination Certificate
- Exhibit F: Reporting Requirements

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

WISHING TO BE LEGALLY BOUND, the parties have caused this Agreement to be executed below by each party's duly authorized representative:

RIDE CONNECTION, INC.

Signature

Printed Name

Title

Date

CLACKAMAS COUNTY

Commissioner: Jim Bernard, Chair

Commissioner: Sonya Fischer

Commissioner: Ken Humbertson

Commissioner: Paul Savas

Commissioner: Martha Schrader

Signing on Behalf of the Board:

By: _____
Rich Swift, Director
Health, Housing and Human Services

Dated: _____

Approved to Form:

By: _____
Clackamas County Council

Dated: _____

September 20, 2018

Board of County Commissioner
Clackamas County

Members of the Board:

Approval of Agreement #18549 with Ride Connection, Inc.
to Provide Funding for Vehicle Maintenance of Ride Connection owned
Vehicles Operated by Urban Community-based Clackamas County
Transportation Consortium members

Purpose/Outcomes	Social Services-Transportation Reaching People and Senior Center based transportation services to assist older and disabled county residents in meeting their transportation needs to conduct their personal business, grocery shop, medical and/or other appointments.
Dollar Amount and Fiscal Impact	Agreement Amount \$20,250. The contract is funded through the agreements with State of Oregon, Elderly and Disabled Transportation Fund – Federal Transit Administration 5310 Grant.
Funding Source	Federal Transit Administration 5310 Grant. No County General Funds are involved
Duration	Effective July 1, 2018 and terminates on June 30, 2019
Previous Board Action	None
Strategic Plan Alignment	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 needs of older adults in the community.
Contact Person	Brenda Durbin, Director, Social Services Division 503-655-8641
Contract No.	H3S# 9000

BACKGROUND:

The Social Services Division of the Health, Housing and Human Services request approval of Agreement #18556 with Ride Connection, Inc. to provide pass through funding for vehicle maintenance of the vehicles owned by Ride Connection and operated by the urban community-based members of the Clackamas County Transportation Consortium. This contract will provide reimbursement funding to Consortium members for the routine maintenance of specified vehicles used for transportation services provided to seniors and persons with disabilities.

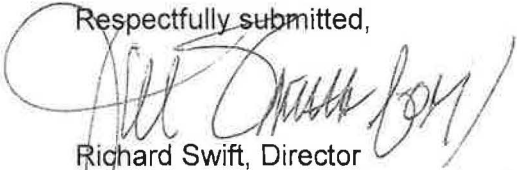
Transportation services are offered to area seniors and persons with disabilities who have limited or no access to public transportation. Any disabled adult, or person over the age of 60, living in Clackamas has access to transportation services through either their local Adult/Senior Community Centers or the Social Services Transportation Reaching People (TRP) program. Transportation services provide a link for residents to access other services that meet their individual needs. This helps them to remain independent and involved in the community as long as possible.

This contract is late due to Ride Connection not being able to release agreements/modifications to its sub-contractors until their funding source released their contract and approved the Subrecipient agreements issued by Ride Connection. This resulted in the delay of Ride Connection sending out its contracts for FY18-19. County Council reviewed and approved this agreement on 9/10/18. No County General 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.

Respectfully submitted,

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

Richard Swift, Director
Health, Housing and Human Services

**SERVICES AGREEMENT #18549
BETWEEN
RIDE CONNECTION INC. and Clackamas County Consortium**

PARTIES:

1. Ride Connection, Inc. ("Ride Connection" or "Recipient"), and
2. Clackamas County Consortium ("Subrecipient")

RECITALS:

- A. In the reauthorization of the Transportation Bill (MAP-21) signed into law on July 6, 2012, federal funding was established for programs that meet the transportation needs of older adults and people with disabilities when the transportation service provided is unavailable, insufficient, or inappropriate to meeting these needs.
- B. Oregon Department of Transportation ("ODOT") has made funds available to Ride Connection pursuant to the Federal Transportation Administration Program for Enhanced Mobility of Seniors and Individuals With Disabilities, 49 U.S.C. §5310 ("5310 Funds"). Ride Connection is a pass-through recipient of these funds through Grant Agreement/Contract No. 32207 (the "Prime Contract") from ODOT.
- C. Ride Connection and Subrecipient enter into this Subrecipient Agreement (the "Agreement") for the purpose of procuring Subrecipient's services, for which payment in whole or part shall be from 5310 Funds.

AGREEMENTS:

1. General

- A. Scope of Agreement - This Agreement contains the terms and conditions that governs all services, and deliverables, (the "Services") to be performed by Subrecipient during the Term of this Agreement, which shall be amended as needed for one or more projects. However, execution of this Agreement does not obligate Ride Connection to award any Services to Subrecipient, other than the initial scope of Services attached in Exhibit A.
 - (1) This Agreement consists of this document, all Exhibits or other attachments, and other documents referenced herein and incorporated by this reference. Subrecipient shall comply with all applicable federal laws, regulations, executive orders, circulars, rules, policies, procedures and directives, whether or not expressly set forth in this Agreement, including but not limited to the following, which are incorporated into and made a part hereof: (1) the terms and conditions applicable to a "Recipient" set forth in the Prime Contract; (2) OMB Circular 2 CFR 200 (3) FTA Master Agreement, (4) Annual Certifications and Assurances, (5) FTA C 9070.1G.

- B. Scope of Services and Changes - Subrecipient is responsible for compliance with all applicable federal laws, regulations, executive orders, circulars, rules, policies, procedures and directives, whether or not expressly set forth in this Agreement, including but not limited to Federal Terms and Conditions, attached as Exhibit B. Subrecipient agrees that it is under a continuing obligation to comply with the foregoing requirements, as they be modified or amended from time to time. Subrecipient must rely on its own independent judgment to ensure compliance with this section. Oral or written statements by Ride Connection are not to be relied on as a substitute for Subrecipient's independent obligation to follow all applicable laws as required by this section. In the event any change to the Services as requested by Ride Connection results in a material increase or decrease in the Services, then an equitable adjustment in the total compensation owed to Subrecipient by Ride Connection shall be determined by Ride Connection and subsequent payments adjusted accordingly. Similarly, if any change to the Services results in a material change to the project schedule, it shall also be accordingly determined and adjusted by Ride Connection after consultation with Subrecipient.
- C. Schedule - Subrecipient and Ride Connection agree that time is of the essence for all activities comprising the Services under this Agreement.
- D. Audit Right - Subrecipient agrees that Ride Connection rights of audit and review under Paragraph 2 of this Agreement specifically include Subrecipient's financial records, management and program systems and any associated records. Subrecipient shall comply with any monitoring and audit requirements established by Ride Connection pertaining to this Agreement.
- (1) In the event that any audit or review of Subrecipient's records reveals a variance of Five Percent (5%) or more in cost overruns or charges in excess of any agreed upon price, then Ride Connection's costs of audit or review shall be reimbursed immediately by Subrecipient.
- E. Subcontracts - Subrecipient shall not enter into subcontracts for performance of Services under this Agreement except as may be specifically authorized by this Agreement in the attached and incorporated Exhibit A. Subrecipient shall not be relieved of any responsibility for performance of Subrecipient's duties under this Agreement, regardless of any subcontract entered into. Subrecipient agrees that any subcontractor performing services under this Agreement shall comply with the requirements of this Agreement including FTA third-party agreement contract provisions and requirements, as may be amended, and shall enter into a written agreement with each subcontractor requiring the incorporation of those requirements as applicable to each tier. Any delay or defect in the performance of any part of Subrecipient's Services shall not relieve Subrecipient of its primary obligation under this Agreement to ensure timely and satisfactory performance of all the Services. Any subcontractor delay or defect in performance under this Agreement shall be subject to the indemnification provisions of Section 7.
- (1) Subrecipient acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies" 49 CFR Part 31, apply to its actions pertaining to the Services under this Agreement. Upon execution of this

Agreement, Subrecipient certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make or cause to be made pertaining to this Agreement. In addition to other penalties that may be applicable, Subrecipient acknowledges that if it makes, or causes to be made a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on Subrecipient to the extent the Federal Government deems appropriate.

- (2) Subrecipient also acknowledges that if it makes, or causes to be made a false, fictitious or fraudulent claim, statement, submission, or certification to the Federal Government under an Agreement connected with a project that is financed in whole or part with Federal assistance awarded by FTA under 49 U.S.C. Chapter 53 or any other Federal law, the Government reserves the rights to impose penalties of 18 U.S.C. 1001 and 49 U.S.C 5323(1) on Subrecipient, to the extent the Federal Government deems appropriate.
- (3) Subrecipient agrees to include the above two clauses in each subcontract it awards under this Agreement financed in whole or in part with FTA funds. It is further agreed that the clauses shall not be modified except to identify the subcontractor who will be subject to the provisions.

- G. Drug-Free Covered Agreement - This Agreement is a covered transaction for purposes of 49 CFR Part 29. As such, Subrecipient is required to verify that none of Subrecipient, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945. By signing this Agreement, Subrecipient makes a material representation of fact relied upon by Ride Connection that Subrecipient has complied with 49 CFR Part 29. If it is later determined that Subrecipient knowingly rendered an erroneous representation of compliance with 49 CFR Part 29, in addition to and without limitation of the remedies available to Ride Connection, ODOT and the Federal Government may pursue any available remedies, including but not limited to suspension and/or debarment. In addition, Subrecipient is required to comply with 49 CFR 29, Subpart C throughout the term of this Agreement, and must include the requirement to comply with 49 CFR Part 29, Subpart C in any lower tier covered transaction it enters into.

2. Inspection of Records and Services

- A. Recordkeeping Term - Subrecipient shall maintain intact and readily accessible a complete set of records relating to this Agreement for six (6) years after the date of transmission of the final expenditure report for the Project or if expiration is later, upon expiration of the Agreement, including but not limited to all data, documents, reports, records, contracts and supporting materials as the Federal government, ODOT or Ride Connection may require. Subrecipient shall permit Ride Connection, ODOT or the Secretary of State of the State of Oregon, the U.S. Department of Transportation, and the Comptroller General of the United States, and all of their respective authorized representatives, to inspect and audit all work, Services, materials, payrolls, books, accounts, and other data and records of Subrecipient relating to its performance under this Agreement until the expiration of six (6) years after the date of transmission of the final expenditure report for the Project or expiration of the

Agreement, if expiration is later. Upon request by Ride Connection, Subrecipient shall provide Ride Connection access to and shall provide a copy of records maintained by Subrecipient under this Agreement.

- B. Annual Self-Audit - Subrecipient shall follow the requirements stated in the Single Audit Act, 31 U.S.C. 7501 et seq. If Subrecipient expends Federal funds in excess of \$750,000 from all sources in its fiscal year, Subrecipient is subject to audit conducted in accordance with OMB Circular 2 CFR 200, Audits of States, Local governments, Non-profit Institutions. Subrecipient shall, at Subrecipient's own expense, submit to Ride Connection, 9955 NE Glisan St, Portland, OR 97220, an annual audit covering the funds expended under this Agreement and shall submit the annual audit of any subcontractor of Subrecipient responsible for the financial management of funds received under this Agreement.
- (1) Subrecipient shall at Subrecipient's expense, submit to Ride Connection, 9955 NE Glisan St, Portland, OR 97220, a copy of any annual audit covering the funds expended under this Agreement by Subrecipient or any subcontractor of Subrecipient receiving funds as a result of this Agreement that is performed due to state law or regulation or conducted as an independent activity. Subrecipient shall also at its expense, submit to Ride Connection at the foregoing address, a copy of the management letter that accompanies an annual audit covering the funds expended under this Agreement by Subrecipient or any subcontractor of Subrecipient receiving funds as a result of this Agreement.
- C. Audit Passthrough to Subcontractors - Subrecipient further agrees to include in any third party contract under this Agreement a provision to the effect that the contractor must retain and grant Ride Connection, ODOT, the U.S. Department of Transportation, and the Comptroller General of the United States, or any of their authorized representatives access to all books, documents, papers and records directly pertinent to the contract, for the purpose of making audit, examination, excerpts and transcriptions, until the expiration of six (6) years (three years for federal retention requirements and an additional three years for state retention requirements) after final payment under the contract or expiration of the contract if expiration is later.
- (1) The periods of access and examination described in subparagraphs A and B of this Paragraph for records that relate to (1) disputes between Ride Connection and Subrecipient, (2) litigation or settlement of claims arising out of the performance of this contract, or (3) costs and expenses of this Agreement as to which exception has been taken by the Comptroller General or any of their duly authorized representatives, shall continue until all disputes, claims, litigation, appeals and exceptions have been resolved. Subrecipient agrees to include in any third party contract under this Agreement a provision to this effect.
- D. The foregoing provisions are in addition to and not in lieu of any other applicable federal or state laws, regulations, rules, circulars or directives. Subrecipient agrees to include in any third party contract under this Agreement a provision to this effect.

3. Reporting Requirements

- A. Monthly reports shall be due on the 20th day after the end of the preceding month.
- B. Reports may include any of the following types of information required by FTA Circular 5010.1C, Chapter 1, Section (5) Reporting Requirements, particularly the status of grant activity line items, budget and schedule changes, milestone revisions or cost variances, outstanding claims, change orders and other information that the circular may require. Ride Connection may require additional reporting information from the Subrecipient.

4. Compensation

- A. Agreed Price - The maximum funding to be disbursed to Subrecipient under this Agreement is \$20,250.00. Ride Connection shall pay Subrecipient for full, complete, and satisfactory performance of the Services, upon Ride Connection's receipt of payment from ODOT for Subrecipient's Services, at the price and/or rates mutually agreed by the parties under this Agreement for the applicable project. No other costs, rates, or fees shall be payable to the Subrecipient. Except as set forth in this Agreement, Subrecipient shall bear sole responsibility for all additional expenses incurred in connection with its performance of the Services.
- B. Payment Terms - Subrecipient shall submit to Ride Connection monthly invoices and any other documentation requested by Ride Connection for payment at such times as will enable Ride Connection to timely apply for payment from ODOT. When required by Ride Connection, and as a condition precedent to any payment, and particularly final payment, Subrecipient shall provide, in a form satisfactory to Ride Connection, lien releases, claim waivers, and affidavits of payment from Subrecipient, and its lower-tier subcontractors and suppliers of any tier, for any portion of Subrecipient's Services.
- C. Withholding - Ride Connection may withhold payment of funds or offset future payments against funds already paid to Subrecipient if the funds are not being used in accordance with this Agreement, all required reporting has not been submitted, or there are any unresolved audit findings relating to the Subrecipient's performance, subject to the dispute resolution process in Section 18. Subrecipient shall assure that funds allocated hereunder are used only for the purposes permitted, and shall, upon breach of conditions that require Ride Connection to reimburse funds to ODOT or otherwise incur costs from ODOT withholding of funds, hold harmless and indemnify Ride Connection for an amount equal to the funds required to be repaid or withheld plus any additional costs or expenses incurred by Ride Connection. In the event a creditor imposes any lien or claim for labor, fringe benefits, taxes, supplies, materials, equipment rental or other charges against the Services covered by this Agreement, thereby legally encumbering the Services, the amount of such obligation may be deducted by Ride Connection from any payment or payments, including retainage, made under this Agreement.

5. Independent Contractor

Subrecipient is an independent contractor for all purposes under this Agreement, and shall be

exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement, including but not limited to workers compensation, unemployment taxes and state and federal income tax withholdings. Subrecipient shall have sole control and supervision over the manner in which services are performed, subject only to consistency with the terms of this Agreement. Neither Subrecipient, nor its officers, directors, employees, subcontractors or drivers, are officers, employees or agents of Ride Connection as those terms are used in ORS 30.265. Subrecipient, its directors, officers, employees, subcontractors or drivers shall not hold themselves out either explicitly or implicitly as officers, employees or agents of Ride Connection for any purpose whatsoever. Nothing in this Agreement shall be deemed to create a partnership, franchise or joint venture between the parties.

6. Confidential Information

Subrecipient agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Subrecipient uses in maintaining the confidentiality of its own confidential information, but no less stringent as reasonable care, and shall not, without the disclosing entity's prior written consent, 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 the provision of Services hereunder. Subrecipient shall advise Ride Connection immediately if Subrecipient learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Section, and Subrecipient shall, at its expense, cooperate with Ride Connection in seeking injunctive or other equitable relief against any such person.

7. Indemnification

A. Indemnified Conditions – Subject to the Oregon Tort Claims Act and the Oregon Constitution, Subrecipient agrees to fully indemnify, defend, and hold harmless the State of Oregon, ODOT, Ride Connection and their directors, officers, employees and agents (the "Indemnitees") from and against all claims, suits, actions of whatsoever nature, damages or losses, and all expenses and costs incidental to the investigation, resulting from or arising out of the activities of Subrecipient, its officers, employees or agents under this Agreement, to the fullest extent permitted by law, including but not limited to the following:

- (i) Bodily injury or death to any person;
- (ii) Property damage to any personal or real property owned by anyone;
- (iii) Failure to comply with any health and safety, corporate or administrative ordinances, regulations, orders, permits, licenses, and laws;
- (iv) Infringement of any intellectual property or other third party rights;
- (v) Discharge or causing the discharge of any hazardous or polluting substance; and
- (vi) Liens, claims, demands, or suits of whatever nature brought by Subrecipient's laborers, subcontractors, material and equipment providers, or other creditors to enforce a right of any kind made upon or against the Services or the real property where the Services are performed.

- B. Indemnity by Subcontractors - Subrecipient agrees to include in any third party contract under this Agreement a provision to the effect that the contractor shall fully indemnify, hold harmless and defend, and hold harmless the State of Oregon, ODOT, Ride Connection and their directors, officers, employees and agents (the "Indemnitees") from and against all claims, suits, actions of whatsoever nature, damages or losses, and all expenses and costs incidental to the investigation, resulting from or arising out of the activities of such subcontractor, its officers, employees or agents under the contract between Subrecipient and such subcontractor procured pursuant to this Agreement.
- C. Indemnatee Consent - Subrecipient shall not defend any claim in the name of the State of Oregon, any Agency of the State of Oregon, ODOT, or Ride Connection, not purport to act as legal representative of same, without the prior written consent of the Oregon Attorney General, or Ride Connection.
- D. Limitation on Indemnification - Subrecipient's indemnification above shall not include any liability to the extent caused by or resulting from the concurrent negligence of any Indemnitees. Any legal limitations now or hereafter in effect affecting the validity or enforceability of the indemnity, defense and hold harmless obligations assumed by Subrecipient pursuant to this Agreement shall operate to amend the Subrecipient's obligations only to the minimum extent necessary for the indemnity, defense and hold harmless contractual provision to conform with the requirements of such limitations, and as so modified, the obligations shall continue in full force and effect.
- E. No Consequential Damages - Neither Ride Connection nor any of its officers, employees, directors, and agents shall have any liability to Subrecipient regardless of the theory of recovery, including breach of contract or negligence, to the other party for any indirect, incidental, special, or consequential damages, including but not limited to loss of revenue or profit, whether actual or anticipated, loss of use, failure to realize anticipated savings, loss of or damage to data or other commercial or economic loss.

8. Workers Compensation

Subrecipient, its subcontractors, if any, and all employers working under this Agreement are either subject employers under the Oregon Workers Compensation Law and shall comply with ORS 656.017, which requires them to provide workers compensation coverage for all their subject workers, or employers that are exempt under ORS 656.126(2). Subrecipient expressly waives any statutory or common law immunity, in accordance with the Oregon Revised Statutes, Vol. 14, Section 656, Revised Code of Washington, Title 51, as amended, or any other applicable laws or regulations that would otherwise shield an employer from insurance subrogation or other claims.

9. Insurance

- A. While this Agreement is in effect, Subrecipient agrees that it shall maintain in effect the insurance coverage set forth below, as well as to require any subcontractors it uses to agree to comply with the insurance requirements provided below. Failure of Ride

Connection to demand such certificate or other evidence of full compliance with these insurance requirements, or failure of Ride Connection to identify a deficiency from evidence that is provided shall not be construed as a waiver of Subrecipient's obligation to require such insurance from its subcontractors.

Clackamas County is self-insured for workers' compensation, and general, auto and professional liability, in accordance with the provisions of ORS 30.272 (Tort Claims Act) and ORS 656.403 (Workers' Compensation). The County maintains an insurance fund from which to pay all costs and expenses relating to claims for which it is self-insured. The County's exposure for general, auto and professional liability is limited by ORS 30.272 to: \$115,800/\$579,000 property damage and \$1,412,000 total damages per occurrence.

- B. Subrecipient's subcontractors, if any, shall be responsible for payment of all respective premiums and deductibles. Insurance shall be maintained of the types and in the amounts described below, and shall be from carriers acceptable to Ride Connection:
- (1) Commercial General Liability (CGL) Insurance covering bodily injury and property damage with a limit of not less than \$1,000,000 each occurrence, and aggregate of \$2,000,000.
 - (2) Business Auto Liability Insurance covering Bodily injury, Death and Property damage with a limit of not less than \$2,000,000 each accident. Such insurance shall cover liability arising out of the use of any auto (including owned, hired, and non-owned autos).
 - (3) Workers Compensation and Employer's Liability Insurance. The employer's liability limit shall not be less than \$1,000,000 each accident for bodily injury by an accident and \$1,000,000 each employee for bodily injury by disease. The workers compensation limit shall be equivalent to or better than the Oregon statutory limits.
 - (4) Sexual Abuse/Molestation coverage with limits no less than \$500,000 per occurrence/aggregate.
 - (5) Tail Coverage, if any of the required insurance policies is on a "claims made" basis, such as professional liability insurance, the subcontractor 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 sub agreement for subcontractors, for a minimum of 24 months following the later of: (i) the Subrecipient's completion and ODOT's acceptance of all services required under this Agreement, and the subcontractors completion and Subrecipient's acceptance of all services required under the sub agreement or, (ii) the expiration of all warranty periods provided under the sub agreement with respect to the subcontractor. Notwithstanding the foregoing 24-month requirement, if the subcontractor 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 subcontractor may request and TriMet may grant approval of the maximum "tail" coverage period

reasonably available in the marketplace. If ODOT approval is granted, the subcontractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.

(6) The insurance required under this Paragraph shall:

Include Ride Connection, ODOT, the State of Oregon, the Federal Transit Administration, and each of their respective directors, officers, agents, elected officials, and employees as additional insureds with respect to work or operations connected with the Agreement; and

The Subrecipient or its insurer must provide 30 days' written notice to Ride Connection before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

10. Claims, Notice.

- A. Notice Period - Subrecipient shall provide written notice of any claim under this Agreement to Ride Connection within five (5) business days of the circumstances giving rise to the claim or within sufficient time to allow Ride Connection to give notice to ODOT.
- B. Notice Content - Any claim by Subrecipient must set forth in detail the entitlement and quantum basis for Subrecipient's claim with supporting data and/or the entitlement basis to Ride Connection.
- C. Requirement to Continue Services - Whether or not Subrecipient has a claim pending with Ride Connection, Subrecipient shall continue performing Services under this Agreement. Any suspension of Services by Subrecipient, without written consent by Ride Connection, may be considered by Ride Connection as a material breach of this Agreement. Ride Connection does not waive the requirement for timely written notice and/or timely written submission of the Statement of Claim unless Ride Connection's waiver is unequivocal, explicit, and in writing.

11. Termination

Ride Connection may terminate this Agreement, in whole or in part, effective upon delivery of written notice to Subrecipient, or at such later date as may be established by Ride Connection, under any of the following conditions:

- A. Subrecipient fails to provide services called for by this Agreement within the time specified herein or any extension thereof;
- B. Subrecipient fails to comply with or perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from Ride Connection fails to correct such failures within 10 days or such longer period as Ride Connection may authorize;
- C. Ride Connection fails to receive funding, or appropriations, limitations or other

expenditure authority at levels sufficient to pay for the work provided in this Agreement, or if Ride Connection determines to terminate for its own convenience;

- D. Any laws, regulations, rules or guidelines are modified, changed or interpreted in such a way that financial assistance or purchase of equipment provided for in this Agreement is no longer allowable or is no longer eligible for funding proposed by this Agreement;
- E. Both parties agree that continuation of the Project would not produce results commensurate with the further expenditure of funds; or
- F. Subrecipient takes any action pertaining to this Agreement without the approval of Ride Connection and which under the provisions of this Agreement would have required the approval of Ride Connection.
- G. Subrecipient may terminate this Agreement, in whole or in part, upon 30 days written notice to Ride Connection.

Any termination of this Agreement shall not prejudice any rights or obligations accrued to the parties prior to termination.

12. Compliance with Laws

Federal laws and regulations - In addition to those elsewhere specified, Subrecipient shall comply with any applicable federal, state and local laws, rules and regulations applicable to the project hereunder, including but not limited to the following: all federal, state and local statutes, regulations, administrative rules, executive orders, ordinances and other laws applicable to the Services. Subrecipient expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable: (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659a.142; (iv) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations; (v) the Clean Air Act (42 U.S.C. 7401-7671q); (vi) the Water Pollution Control Act as amended (33 U.S.C. 1251-1387); (vii) Executive Order 11738; (viii) Environmental Protection Agency regulations (40 CFR part 15); and (ix) and all applicable standards, orders, regulations and administrative rules established pursuant to the foregoing laws.

Payment of taxes and business license - Subrecipient shall comply with all federal, state, and local employment and labor laws and regulations in all aspects of its operations, including, but not limited to, all applicable federal, state, or local labor or employment laws including but not limited to laws and regulations regarding hiring, training, assignments, promotions, discipline and/or discharge, including but not limited to the Services Contract Act ("SCA"), for which it is Subrecipient's sole responsibility to determine if the SCA applies to it and the Services. Ride Connection may from time to time at its sole discretion seek and obtain a certification from Subrecipient that it is in compliance with the foregoing, and Subrecipient will provide, upon reasonable request by Ride Connection, such documents and supporting materials to evidence Subrecipient's compliance with this Section.

ODOT Conflict of Interest Guidelines - If required applicable by ODOT, Subrecipient and its subcontractors shall comply with the ODOT Conflict of Interest ("COI") Guidelines and COI Disclosure Form. Subrecipient and, to the best of the undersigned's information, knowledge and Subrecipient's Associates (as defined in the COI Guidelines) are in compliance with and have no disclosures required per the COI Guidelines (available at the following Internet address: <http://www.oregon.gov/ODOT/CS/OPO/Pages/ac.aspx>); Subrecipient also confirms that no Federal appropriated funds have been paid or will be paid, by or on behalf of Subrecipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

13. Term

This Agreement shall begin on 7/1/2018 and shall remain in effect through 6/30/2019 unless terminated sooner under the provisions of this Agreement.

14. Communications

All communications between the parties regarding this Agreement shall be directed to the parties' as indicated below:

Ride Connection:

Dean Orr
Ride Connection
9955 NE Glisan St.
Portland, OR 97220

Subrecipient:

Stefanie Reid
Clackamas County Consortium
2051 Kaen Rd
Oregon City, OR 97045-1819

15. No Third Party Beneficiary

Ride Connection and Subrecipient are the only parties to this Agreement and, as such, are the only parties entitled to enforce its terms. Nothing in this Agreement gives or shall be construed to create or provide any legal right or benefit, direct, indirect or otherwise to any other party unless that party is individually identified by name herein and expressly described as an intended beneficiary of the terms of this Agreement.

16. Assignment

Subrecipient may not assign, delegate or subcontract any of its rights or obligations under this Agreement to any other party without the prior written consent of Ride Connection. Any assignment, delegation or subcontract in violation of this paragraph shall be null and void, and shall constitute grounds for immediate termination by Ride Connection.

17. Governing Law

This Agreement shall be governed by the laws of the State of Oregon, to the express exclusion of all other choice of law alternatives.

18. Dispute Resolution

- A. Executive Negotiation - The Parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement, or any breach hereof or any Services performed hereunder, promptly by negotiation between executives who have authority to settle the controversy. Any party may give the other party written notice of any dispute not resolved during the normal course of business. Such notice shall include a statement of that party's position and documentation supporting that parties claim and the name and title of the executive who will be representing that party and any other person who will accompany the executive. The receiving party shall respond in kind within five (5) days of the date of notice. Within ten (10) days after delivery of the initial notice, the executives of both parties shall meet at a mutually acceptable time and place and use good faith efforts to resolve the dispute. If dispute is not then resolved, either party may give the other written notice that these executive negotiations are concluded. Negotiations pursuant to this Section shall be confidential and shall be treated as compromise and settlement negotiations for purposes of Law and rules of evidence. Time requirements herein may be modified upon mutual written consent of the parties.
- B. Mediation - In the event that the parties are unable to settle the dispute through direct negotiations as set forth above, all remaining controversies or claims shall then be submitted to mediation within ten (10) days from written notice of concluded negotiations following the Mediation Rules published by the Arbitration Service of Portland, Inc. Unless the parties agree otherwise, mediation shall be held in Portland, Oregon. This Agreement to mediate and any other agreement or consent to mediate entered into in accordance with this Agreement shall be specifically enforceable under the prevailing law of any court having jurisdiction.
- C. Arbitration - In the event that the parties are unable to settle the dispute through negotiation and mediation as set forth above, either party may seek final resolution through binding arbitration pursuant to the Commercial Arbitration Rules of the Arbitration Service of Portland, Inc. for one arbitrator. The arbitrator's decision shall be binding, final, and enforceable by any court with appropriate jurisdiction in accordance with the Rules of the Arbitration Serviced of Portland, Inc.

- D. Costs and Award - The prevailing party in any arbitration shall be eligible for the award of all dispute resolution costs and expenses, including attorney's fees through all tiers of dispute resolution, including mediation, if so awarded by the arbitrator or court of jurisdiction.

19. Entire Agreement/Authority

This Agreement, exhibits, and any other attachments constitute the entire Agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made shall be effective only in the specific instance and for the specific purpose given. The failure of Ride Connection to enforce any provision of this Agreement shall not constitute a waiver by Ride Connection of that or any other provision. The individuals signing below represent and warrant that they have authority to bind the party for which they sign.

20. Severability

If any provision of this Subcontract will be held to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable. If a court or arbitrator finds that any provision of this Subcontract is invalid or unenforceable, but that by limiting such provision, it would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited.

21. Surviving Provisions

Notwithstanding termination or expiration of this Agreement, the following provisions shall survive and continue to be in full force and effect: 1D (Audit); 2A (Recordkeeping); 6 (Confidential Information); 7 (Indemnification); 8 (Workers Compensation Insurance); 9 (Insurance); 17 (Governing Law); 18 (Dispute Resolution); and 22 (Surviving Provisions).

22. Prompt Payment

Subrecipient shall make payment promptly, as due, to all persons supplying to the Subrecipient labor or material for the performance of the work provided for in the contract. At a minimum, Subrecipient shall pay subcontractors no later than thirty (30) days from receipt of payment from Ride Connection. Subrecipient shall not hold retainage from subcontractors.

23. Agreement Documents

This Agreement consists of this document and the following documents, all of which are attached hereto and incorporated herein reference:

- Exhibit A: Scope of Work
Exhibit B: Federal Terms and Conditions
Exhibit C: Funding Information
Exhibit D: Lobbying Certificate (signature required)
Exhibit E: Nondiscrimination Certificate
Exhibit F: Reporting Requirements
Exhibit G: Vehicle Maintenance Requirements and Program (signature required)
Exhibit H: Vehicle and Equipment Information and Inventory

WISHING TO BE LEGALLY BOUND, the parties have caused this Agreement to be executed below by each party's duly authorized representative:

RIDE CONNECTION, INC.

Signature

Printed Name

Title

Date

CLACKAMAS COUNTY

Commissioner: Jim Bernard, Chair

Commissioner: Sonya Fischer

Commissioner: Ken Humbertson

Commissioner: Paul Savas

Commissioner: Martha Schrader

Signing on Behalf of the Board:

By: _____ |
Rich Swift, Director
Health, Housing and Human Services

Dated: _____

Approved to Form:

By: _____
Clackamas County Council

Dated: _____

September 20, 2018

Board of County Commissioner
Clackamas County

Members of the Board:

Approval of Agreement #18556 with Ride Connection, Inc. to Provide Funding for Vehicle Maintenance of Ride Connection owned Vehicles Operated by Rural Community-based Clackamas County Transportation Consortium members

Purpose/Outcomes	Social Services-Transportation Reaching People and Senior Center based transportation services to assist older and disabled county residents in meeting their transportation needs to conduct their personal business, grocery shop, medical and/or other appointments.
Dollar Amount and Fiscal Impact	Agreement Amount \$21,600. The contract is funded through the agreements with State of Oregon, Elderly and Disabled Transportation Fund – Federal Transit Administration 5310 Grant.
Funding Source	Federal Transit Administration 5310 Grant. No County General Funds are involved
Duration	Effective July 1, 2018 and terminates on June 30, 2019
Previous Board Action	None
Strategic Plan Alignment	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 needs of older adults in the community.
Contact Person	Brenda Durbin, Director, Social Services Division 503-655-8641
Contract No.	H3S# 9001

BACKGROUND:

The Social Services Division of the Health, Housing and Human Services request approval of Agreement #18556 with Ride Connection, Inc. to provide pass through funding for vehicle maintenance of the vehicles owned by Ride Connection and operated by the rural community-based members of the Clackamas County Transportation Consortium. This contract will provide reimbursement funding to Consortium members for the routine maintenance of specified vehicles used for transportation services provided to seniors and persons with disabilities.

Transportation services are offered to area seniors and persons with disabilities who have limited or no access to public transportation. Any disabled adult, or person over the age of 60, living in Clackamas has access to transportation services through either their local Adult/Senior Community Centers or the Social Services Transportation Reaching People (TRP) program. Transportation services provide a link for residents to access other services that meet their individual needs. This helps them to remain independent and involved in the community as long as possible.

This contract is late due to Ride Connection not being able to release agreements/modifications to its sub-contractors until their funding source released their contract and approved the Subrecipient

agreements issued by Ride Connection. This resulted in the delay of Ride Connection sending out its contracts for FY18-19. County Council reviewed and approved this agreement on 9/10/18. No County General 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.

Respectfully submitted,

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

Richard Swift, Director
Health, Housing and Human Services

**SERVICES AGREEMENT #18556
BETWEEN
RIDE CONNECTION INC. and Clackamas County Consortium**

PARTIES:

1. Ride Connection, Inc. ("Ride Connection" or "Recipient"), and
2. Clackamas County Consortium ("Subrecipient")

RECITALS:

- A. In the reauthorization of the Transportation Bill (MAP-21) signed into law on July 6, 2012, federal funding was established for programs that meet the transportation needs of older adults and people with disabilities when the transportation service provided is unavailable, insufficient, or inappropriate to meeting these needs.
- B. Oregon Department of Transportation ("ODOT") has made funds available to Ride Connection pursuant to the Federal Transportation Administration Program for Enhanced Mobility of Seniors and Individuals With Disabilities, 49 U.S.C. §5310 ("5310 Funds"). Ride Connection is a pass-through recipient of these funds through Grant Agreement/Contract No. 32867 (the "Prime Contract") from ODOT.
- C. Ride Connection and Subrecipient enter into this Subrecipient Agreement (the "Agreement") for the purpose of procuring Subrecipient's services, for which payment in whole or part shall be from 5310 Funds.

AGREEMENTS:

1. General

- A. Scope of Agreement - This Agreement contains the terms and conditions that governs all services, and deliverables, (the "Services") to be performed by Subrecipient during the Term of this Agreement, which shall be amended as needed for one or more projects. However, execution of this Agreement does not obligate Ride Connection to award any Services to Subrecipient, other than the initial scope of Services attached in Exhibit A.
 - (1) This Agreement consists of this document, all Exhibits or other attachments, and other documents referenced herein and incorporated by this reference. Subrecipient shall comply with all applicable federal laws, regulations, executive orders, circulars, rules, policies, procedures and directives, whether or not expressly set forth in this Agreement, including but not limited to the following, which are incorporated into and made a part hereof: (1) the terms and conditions applicable to a "Recipient" set forth in the Prime Contract; (2) OMB Circular 2 CFR 200 (3) FTA Master Agreement, (4) Annual Certifications and Assurances, (5) FTA C 9070.1G.

- B. Scope of Services and Changes - Subrecipient is responsible for compliance with all applicable federal laws, regulations, executive orders, circulars, rules, policies, procedures and directives, whether or not expressly set forth in this Agreement, including but not limited to Federal Terms and Conditions, attached as Exhibit B. Subrecipient agrees that it is under a continuing obligation to comply with the foregoing requirements, as they be modified or amended from time to time. Subrecipient must rely on its own independent judgment to ensure compliance with this section. Oral or written statements by Ride Connection are not to be relied on as a substitute for Subrecipient's independent obligation to follow all applicable laws as required by this section. In the event any change to the Services as requested by Ride Connection results in a material increase or decrease in the Services, then an equitable adjustment in the total compensation owed to Subrecipient by Ride Connection shall be determined by Ride Connection and subsequent payments adjusted accordingly. Similarly, if any change to the Services results in a material change to the project schedule, it shall also be accordingly determined and adjusted by Ride Connection after consultation with Subrecipient.
- C. Schedule - Subrecipient and Ride Connection agree that time is of the essence for all activities comprising the Services under this Agreement.
- D. Audit Right - Subrecipient agrees that Ride Connection rights of audit and review under Paragraph 2 of this Agreement specifically include Subrecipient's financial records, management and program systems and any associated records. Subrecipient shall comply with any monitoring and audit requirements established by Ride Connection pertaining to this Agreement.
- (1) In the event that any audit or review of Subrecipient's records reveals a variance of Five Percent (5%) or more in cost overruns or charges in excess of any agreed upon price, then Ride Connection's costs of audit or review shall be reimbursed immediately by Subrecipient.
- E. Subcontracts - Subrecipient shall not enter into subcontracts for performance of Services under this Agreement except as may be specifically authorized by this Agreement in the attached and incorporated Exhibit A. Subrecipient shall not be relieved of any responsibility for performance of Subrecipient's duties under this Agreement, regardless of any subcontract entered into. Subrecipient agrees that any subcontractor performing services under this Agreement shall comply with the requirements of this Agreement including FTA third-party agreement contract provisions and requirements, as may be amended, and shall enter into a written agreement with each subcontractor requiring the incorporation of those requirements as applicable to each tier. Any delay or defect in the performance of any part of Subrecipient's Services shall not relieve Subrecipient of its primary obligation under this Agreement to ensure timely and satisfactory performance of all the Services. Any subcontractor delay or defect in performance under this Agreement shall be subject to the indemnification provisions of Section 7.
- (1) Subrecipient acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies" 49 CFR Part 31, apply to its actions pertaining to the Services under this Agreement. Upon execution of this

Agreement, Subrecipient certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make or cause to be made pertaining to this Agreement. In addition to other penalties that may be applicable, Subrecipient acknowledges that if it makes, or causes to be made a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on Subrecipient to the extent the Federal Government deems appropriate.

- (2) Subrecipient also acknowledges that if it makes, or causes to be made a false, fictitious or fraudulent claim, statement, submission, or certification to the Federal Government under an Agreement connected with a project that is financed in whole or part with Federal assistance awarded by FTA under 49 U.S.C. Chapter 53 or any other Federal law, the Government reserves the rights to impose penalties of 18 U.S.C. 1001 and 49 U.S.C 5323(1) on Subrecipient, to the extent the Federal Government deems appropriate.
- (3) Subrecipient agrees to include the above two clauses in each subcontract it awards under this Agreement financed in whole or in part with FTA funds. It is further agreed that the clauses shall not be modified except to identify the subcontractor who will be subject to the provisions.

- G. **Drug-Free Covered Agreement** - This Agreement is a covered transaction for purposes of 49 CFR Part 29. As such, Subrecipient is required to verify that none of Subrecipient, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945. By signing this Agreement, Subrecipient makes a material representation of fact relied upon by Ride Connection that Subrecipient has complied with 49 CFR Part 29. If it is later determined that Subrecipient knowingly rendered an erroneous representation of compliance with 49 CFR Part 29, in addition to and without limitation of the remedies available to Ride Connection, ODOT and the Federal Government may pursue any available remedies, including but not limited to suspension and/or debarment. In addition, Subrecipient is required to comply with 49 CFR 29, Subpart C throughout the term of this Agreement, and must include the requirement to comply with 49 CFR Part 29, Subpart C in any lower tier covered transaction it enters into.

2. Inspection of Records and Services

- A. **Recordkeeping Term** - Subrecipient shall maintain intact and readily accessible a complete set of records relating to this Agreement for six (6) years after the date of transmission of the final expenditure report for the Project or if expiration is later, upon expiration of the Agreement, including but not limited to all data, documents, reports, records, contracts and supporting materials as the Federal government, ODOT or Ride Connection may require. Subrecipient shall permit Ride Connection, ODOT or the Secretary of State of the State of Oregon, the U.S. Department of Transportation, and the Comptroller General of the United States, and all of their respective authorized representatives, to inspect and audit all work, Services, materials, payrolls, books, accounts, and other data and records of Subrecipient relating to its performance under this Agreement until the expiration of six (6) years after the date of transmission of the final expenditure report for the Project or expiration of the

Agreement, if expiration is later. Upon request by Ride Connection, Subrecipient shall provide Ride Connection access to and shall provide a copy of records maintained by Subrecipient under this Agreement.

- B. Annual Self-Audit - Subrecipient shall follow the requirements stated in the Single Audit Act, 31 U.S.C. 7501 et seq. If Subrecipient expends Federal funds in excess of \$750,000 from all sources in its fiscal year, Subrecipient is subject to audit conducted in accordance with OMB Circular 2 CFR 200, Audits of States, Local governments, Non-profit Institutions. Subrecipient shall, at Subrecipient's own expense, submit to Ride Connection, 9955 NE Glisan St, Portland, OR 97220, an annual audit covering the funds expended under this Agreement and shall submit the annual audit of any subcontractor of Subrecipient responsible for the financial management of funds received under this Agreement.
- (1) Subrecipient shall at Subrecipient's expense, submit to Ride Connection, 9955 NE Glisan St, Portland, OR 97220, a copy of any annual audit covering the funds expended under this Agreement by Subrecipient or any subcontractor of Subrecipient receiving funds as a result of this Agreement that is performed due to state law or regulation or conducted as an independent activity. Subrecipient shall also at its expense, submit to Ride Connection at the foregoing address, a copy of the management letter that accompanies an annual audit covering the funds expended under this Agreement by Subrecipient or any subcontractor of Subrecipient receiving funds as a result of this Agreement.
- C. Audit Passthrough to Subcontractors - Subrecipient further agrees to include in any third party contract under this Agreement a provision to the effect that the contractor must retain and grant Ride Connection, ODOT, the U.S. Department of Transportation, and the Comptroller General of the United States, or any of their authorized representatives access to all books, documents, papers and records directly pertinent to the contract, for the purpose of making audit, examination, excerpts and transcriptions, until the expiration of six (6) years (three years for federal retention requirements and an additional three years for state retention requirements) after final payment under the contract or expiration of the contract if expiration is later.
- (1) The periods of access and examination described in subparagraphs A and B of this Paragraph for records that relate to (1) disputes between Ride Connection and Subrecipient, (2) litigation or settlement of claims arising out of the performance of this contract, or (3) costs and expenses of this Agreement as to which exception has been taken by the Comptroller General or any of their duly authorized representatives, shall continue until all disputes, claims, litigation, appeals and exceptions have been resolved. Subrecipient agrees to include in any third party contract under this Agreement a provision to this effect.
- D. The foregoing provisions are in addition to and not in lieu of any other applicable federal or state laws, regulations, rules, circulars or directives. Subrecipient agrees to include in any third party contract under this Agreement a provision to this effect.

3. Reporting Requirements

- A. Monthly reports shall be due on the 20th day after the end of the preceding month.
- B. Reports may include any of the following types of information required by FTA Circular 5010.1C, Chapter 1, Section (5) Reporting Requirements, particularly the status of grant activity line items, budget and schedule changes, milestone revisions or cost variances, outstanding claims, change orders and other information that the circular may require. Ride Connection may require additional reporting information from the Subrecipient.

4. Compensation

- A. Agreed Price - The maximum funding to be disbursed to Subrecipient under this Agreement is \$21,600.00. Ride Connection shall pay Subrecipient for full, complete, and satisfactory performance of the Services, upon Ride Connection's receipt of payment from ODOT for Subrecipient's Services, at the price and/or rates mutually agreed by the parties under this Agreement for the applicable project. No other costs, rates, or fees shall be payable to the Subrecipient. Except as set forth in this Agreement, Subrecipient shall bear sole responsibility for all additional expenses incurred in connection with its performance of the Services.
- B. Payment Terms - Subrecipient shall submit to Ride Connection monthly invoices and any other documentation requested by Ride Connection for payment at such times as will enable Ride Connection to timely apply for payment from ODOT. When required by Ride Connection, and as a condition precedent to any payment, and particularly final payment, Subrecipient shall provide, in a form satisfactory to Ride Connection, lien releases, claim waivers, and affidavits of payment from Subrecipient, and its lower-tier subcontractors and suppliers of any tier, for any portion of Subrecipient's Services.
- C. Withholding - Ride Connection may withhold payment of funds or offset future payments against funds already paid to Subrecipient if the funds are not being used in accordance with this Agreement, all required reporting has not been submitted, or there are any unresolved audit findings relating to the Subrecipient's performance, subject to the dispute resolution process in Section 18. Subrecipient shall assure that funds allocated hereunder are used only for the purposes permitted, and shall, upon breach of conditions that require Ride Connection to reimburse funds to ODOT or otherwise incur costs from ODOT withholding of funds, hold harmless and indemnify Ride Connection for an amount equal to the funds required to be repaid or withheld plus any additional costs or expenses incurred by Ride Connection. In the event a creditor imposes any lien or claim for labor, fringe benefits, taxes, supplies, materials, equipment rental or other charges against the Services covered by this Agreement, thereby legally encumbering the Services, the amount of such obligation may be deducted by Ride Connection from any payment or payments, including retainage, made under this Agreement.

5. Independent Contractor

Subrecipient is an independent contractor for all purposes under this Agreement, and shall be

exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement, including but not limited to workers compensation, unemployment taxes and state and federal income tax withholdings. Subrecipient shall have sole control and supervision over the manner in which services are performed, subject only to consistency with the terms of this Agreement. Neither Subrecipient, nor its officers, directors, employees, subcontractors or drivers, are officers, employees or agents of Ride Connection as those terms are used in ORS 30.265. Subrecipient, its directors, officers, employees, subcontractors or drivers shall not hold themselves out either explicitly or implicitly as officers, employees or agents of Ride Connection for any purpose whatsoever. Nothing in this Agreement shall be deemed to create a partnership, franchise or joint venture between the parties.

6. Confidential Information

Subrecipient agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Subrecipient uses in maintaining the confidentiality of its own confidential information, but no less stringent as reasonable care, and shall not, without the disclosing entity's prior written consent, 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 the provision of Services hereunder. Subrecipient shall advise Ride Connection immediately if Subrecipient learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Section, and Subrecipient shall, at its expense, cooperate with Ride Connection in seeking injunctive or other equitable relief against any such person.

7. Indemnification

A. Indemnified Conditions – Subject to the Oregon Tort Claims Act and the Oregon Constitution, Subrecipient agrees to fully indemnify, defend, and hold harmless the State of Oregon, ODOT, Ride Connection and their directors, officers, employees and agents (the "Indemnitees") from and against all claims, suits, actions of whatsoever nature, damages or losses, and all expenses and costs incidental to the investigation, resulting from or arising out of the activities of Subrecipient, its officers, employees or agents under this Agreement, to the fullest extent permitted by law, including but not limited to the following:

- (i) Bodily injury or death to any person;
- (ii) Property damage to any personal or real property owned by anyone;
- (iii) Failure to comply with any health and safety, corporate or administrative ordinances, regulations, orders, permits, licenses, and laws;
- (iv) Infringement of any intellectual property or other third party rights;
- (v) Discharge or causing the discharge of any hazardous or polluting substance; and
- (vi) Liens, claims, demands, or suits of whatever nature brought by Subrecipient's laborers, subcontractors, material and equipment providers, or other creditors to enforce a right of any kind made upon or against the Services or the real property where the Services are performed.

- B. Indemnity by Subcontractors - Subrecipient agrees to include in any third party contract under this Agreement a provision to the effect that the contractor shall fully indemnify, hold harmless and defend, and hold harmless the State of Oregon, ODOT, Ride Connection and their directors, officers, employees and agents (the "Indemnitees") from and against all claims, suits, actions of whatsoever nature, damages or losses, and all expenses and costs incidental to the investigation, resulting from or arising out of the activities of such subcontractor, its officers, employees or agents under the contract between Subrecipient and such subcontractor procured pursuant to this Agreement.
- C. Indemnatee Consent - Subrecipient shall not defend any claim in the name of the State of Oregon, any Agency of the State of Oregon, ODOT, or Ride Connection, not purport to act as legal representative of same, without the prior written consent of the Oregon Attorney General, or Ride Connection.
- D. Limitation on Indemnification - Subrecipient's indemnification above shall not include any liability to the extent caused by or resulting from the concurrent negligence of any Indemnitees. Any legal limitations now or hereafter in effect affecting the validity or enforceability of the indemnity, defense and hold harmless obligations assumed by Subrecipient pursuant to this Agreement shall operate to amend the Subrecipient's obligations only to the minimum extent necessary for the indemnity, defense and hold harmless contractual provision to conform with the requirements of such limitations, and as so modified, the obligations shall continue in full force and effect.
- E. No Consequential Damages - Neither Ride Connection nor any of its officers, employees, directors, and agents shall have any liability to Subrecipient regardless of the theory of recovery, including breach of contract or negligence, to the other party for any indirect, incidental, special, or consequential damages, including but not limited to loss of revenue or profit, whether actual or anticipated, loss of use, failure to realize anticipated savings, loss of or damage to data or other commercial or economic loss.

8. Workers Compensation

Subrecipient, its subcontractors, if any, and all employers working under this Agreement are either subject employers under the Oregon Workers Compensation Law and shall comply with ORS 656.017, which requires them to provide workers compensation coverage for all their subject workers, or employers that are exempt under ORS 656.126(2). Subrecipient expressly waives any statutory or common law immunity, in accordance with the Oregon Revised Statutes, Vol. 14, Section 656, Revised Code of Washington, Title 51, as amended, or any other applicable laws or regulations that would otherwise shield an employer from insurance subrogation or other claims.

9. Insurance

- A. While this Agreement is in effect, Subrecipient agrees that it shall maintain in effect the insurance coverage set forth below, as well as to require any subcontractors it uses to agree to comply with the insurance requirements provided below. Failure of Ride

Connection to demand such certificate or other evidence of full compliance with these insurance requirements, or failure of Ride Connection to identify a deficiency from evidence that is provided shall not be construed as a waiver of Subrecipient's obligation to require such insurance from its subcontractors.

Clackamas County is self-insured for workers' compensation, and general, auto and professional liability, in accordance with the provisions of ORS 30.272 (Tort Claims Act) and ORS 656.403 (Workers' Compensation). The County maintains an insurance fund from which to pay all costs and expenses relating to claims for which it is self-insured. The County's exposure for general, auto and professional liability is limited by ORS 30.272 to: \$115,800/\$579,000 property damage and \$1,412,000 total damages per occurrence.

- B. Subrecipient's subcontractors, if any, shall be responsible for payment of all respective premiums and deductibles. Insurance shall be maintained of the types and in the amounts described below, and shall be from carriers acceptable to Ride Connection:
- (1) Commercial General Liability (CGL) Insurance covering bodily injury and property damage with a limit of not less than \$1,000,000 each occurrence, and aggregate of \$2,000,000.
 - (2) Business Auto Liability Insurance covering Bodily injury, Death and Property damage with a limit of not less than \$2,000,000 each accident. Such insurance shall cover liability arising out of the use of any auto (including owned, hired, and non-owned autos).
 - (3) Workers Compensation and Employer's Liability Insurance. The employer's liability limit shall not be less than \$1,000,000 each accident for bodily injury by an accident and \$1,000,000 each employee for bodily injury by disease. The workers compensation limit shall be equivalent to or better than the Oregon statutory limits.
 - (4) Sexual Abuse/Molestation coverage with limits no less than \$500,000 per occurrence/aggregate.
 - (5) Tail Coverage, if any of the required insurance policies is on a "claims made" basis, such as professional liability insurance, the subcontractor 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 sub agreement for subcontractors, for a minimum of 24 months following the later of: (i) the Subrecipient's completion and ODOT's acceptance of all services required under this Agreement, and the subcontractors completion and Subrecipient's acceptance of all services required under the sub agreement or, (ii) the expiration of all warranty periods provided under the sub agreement with respect to the subcontractor. Notwithstanding the foregoing 24-month requirement, if the subcontractor 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 subcontractor may request and TriMet may grant approval of the maximum "tail" coverage period

reasonably available in the marketplace. If ODOT approval is granted, the subcontractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.

(6) The insurance required under this Paragraph shall:

Include Ride Connection, ODOT, the State of Oregon, the Federal Transit Administration, and each of their respective directors, officers, agents, elected officials, and employees as additional insureds with respect to work or operations connected with the Agreement; and

The Subrecipient or its insurer must provide 30 days' written notice to Ride Connection before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

10. Claims, Notice.

- A. Notice Period - Subrecipient shall provide written notice of any claim under this Agreement to Ride Connection within five (5) business days of the circumstances giving rise to the claim or within sufficient time to allow Ride Connection to give notice to ODOT.
- B. Notice Content - Any claim by Subrecipient must set forth in detail the entitlement and quantum basis for Subrecipient's claim with supporting data and/or the entitlement basis to Ride Connection.
- C. Requirement to Continue Services - Whether or not Subrecipient has a claim pending with Ride Connection, Subrecipient shall continue performing Services under this Agreement. Any suspension of Services by Subrecipient, without written consent by Ride Connection, may be considered by Ride Connection as a material breach of this Agreement. Ride Connection does not waive the requirement for timely written notice and/or timely written submission of the Statement of Claim unless Ride Connection's waiver is unequivocal, explicit, and in writing.

11. Termination

Ride Connection may terminate this Agreement, in whole or in part, effective upon delivery of written notice to Subrecipient, or at such later date as may be established by Ride Connection, under any of the following conditions:

- A. Subrecipient fails to provide services called for by this Agreement within the time specified herein or any extension thereof;
- B. Subrecipient fails to comply with or perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from Ride Connection fails to correct such failures within 10 days or such longer period as Ride Connection may authorize;
- C. Ride Connection fails to receive funding, or appropriations, limitations or other

expenditure authority at levels sufficient to pay for the work provided in this Agreement, or if Ride Connection determines to terminate for its own convenience;

- D. Any laws, regulations, rules or guidelines are modified, changed or interpreted in such a way that financial assistance or purchase of equipment provided for in this Agreement is no longer allowable or is no longer eligible for funding proposed by this Agreement;
- E. Both parties agree that continuation of the Project would not produce results commensurate with the further expenditure of funds; or
- F. Subrecipient takes any action pertaining to this Agreement without the approval of Ride Connection and which under the provisions of this Agreement would have required the approval of Ride Connection.
- G. Subrecipient may terminate this Agreement, in whole or in part, upon 30 days written notice to Ride Connection.

Any termination of this Agreement shall not prejudice any rights or obligations accrued to the parties prior to termination.

12. Compliance with Laws

Federal laws and regulations - In addition to those elsewhere specified, Subrecipient shall comply with any applicable federal, state and local laws, rules and regulations applicable to the project hereunder, including but not limited to the following: all federal, state and local statutes, regulations, administrative rules, executive orders, ordinances and other laws applicable to the Services. Subrecipient expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable: (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659a.142; (iv) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations; (v) the Clean Air Act (42 U.S.C. 7401-7671q); (vi) the Water Pollution Control Act as amended (33 U.S.C. 1251-1387); (vii) Executive Order 11738; (viii) Environmental Protection Agency regulations (40 CFR part 15); and (ix) and all applicable standards, orders, regulations and administrative rules established pursuant to the foregoing laws.

Payment of taxes and business license - Subrecipient shall comply with all federal, state, and local employment and labor laws and regulations in all aspects of its operations, including, but not limited to, all applicable federal, state, or local labor or employment laws including but not limited to laws and regulations regarding hiring, training, assignments, promotions, discipline and/or discharge, including but not limited to the Services Contract Act ("SCA"), for which it is Subrecipient's sole responsibility to determine if the SCA applies to it and the Services. Ride Connection may from time to time at its sole discretion seek and obtain a certification from Subrecipient that it is in compliance with the foregoing, and Subrecipient will provide, upon reasonable request by Ride Connection, such documents and supporting materials to evidence Subrecipient's compliance with this Section.

ODOT Conflict of Interest Guidelines - If required applicable by ODOT, Subrecipient and its subcontractors shall comply with the ODOT Conflict of Interest ("COI") Guidelines and COI Disclosure Form. Subrecipient and, to the best of the undersigned's information, knowledge and Subrecipient's Associates (as defined in the COI Guidelines) are in compliance with and have no disclosures required per the COI Guidelines (available at the following Internet address: <http://www.oregon.gov/ODOT/CS/OPO/Pages/ae.aspx>); Subrecipient also confirms that no Federal appropriated funds have been paid or will be paid, by or on behalf of Subrecipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

13. Term

This Agreement shall begin on 7/1/2018 and shall remain in effect through 6/30/2019 unless terminated sooner under the provisions of this Agreement.

14. Communications

All communications between the parties regarding this Agreement shall be directed to the parties' as indicated below:

Ride Connection:

Dean Orr
Ride Connection
9955 NE Glisan St.
Portland, OR 97220

Subrecipient:

Stefanie Reid
Clackamas County Consortium
2051 Kaen Rd
Oregon City, OR 97045-1819

15. No Third Party Beneficiary

Ride Connection and Subrecipient are the only parties to this Agreement and, as such, are the only parties entitled to enforce its terms. Nothing in this Agreement gives or shall be construed to create or provide any legal right or benefit, direct, indirect or otherwise to any other party unless that party is individually identified by name herein and expressly described as an intended beneficiary of the terms of this Agreement.

16. Assignment

Subrecipient may not assign, delegate or subcontract any of its rights or obligations under this Agreement to any other party without the prior written consent of Ride Connection. Any assignment, delegation or subcontract in violation of this paragraph shall be null and void, and shall constitute grounds for immediate termination by Ride Connection.

17. Governing Law

This Agreement shall be governed by the laws of the State of Oregon, to the express exclusion of all other choice of law alternatives.

18. Dispute Resolution

- A. Executive Negotiation - The Parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement, or any breach hereof or any Services performed hereunder, promptly by negotiation between executives who have authority to settle the controversy. Any party may give the other party written notice of any dispute not resolved during the normal course of business. Such notice shall include a statement of that party's position and documentation supporting that parties claim and the name and title of the executive who will be representing that party and any other person who will accompany the executive. The receiving party shall respond in kind within five (5) days of the date of notice. Within ten (10) days after delivery of the initial notice, the executives of both parties shall meet at a mutually acceptable time and place and use good faith efforts to resolve the dispute. If dispute is not then resolved, either party may give the other written notice that these executive negotiations are concluded. Negotiations pursuant to this Section shall be confidential and shall be treated as compromise and settlement negotiations for purposes of Law and rules of evidence. Time requirements herein may be modified upon mutual written consent of the parties.
- B. Mediation - In the event that the parties are unable to settle the dispute through direct negotiations as set forth above, all remaining controversies or claims shall then be submitted to mediation within ten (10) days from written notice of concluded negotiations following the Mediation Rules published by the Arbitration Service of Portland, Inc. Unless the parties agree otherwise, mediation shall be held in Portland, Oregon. This Agreement to mediate and any other agreement or consent to mediate entered into in accordance with this Agreement shall be specifically enforceable under the prevailing law of any court having jurisdiction.
- C. Arbitration - In the event that the parties are unable to settle the dispute through negotiation and mediation as set forth above, either party may seek final resolution through binding arbitration pursuant to the Commercial Arbitration Rules of the Arbitration Service of Portland, Inc. for one arbitrator. The arbitrator's decision shall be binding, final, and enforceable by any court with appropriate jurisdiction in accordance with the Rules of the Arbitration Serviced of Portland, Inc.

- D. Costs and Award - The prevailing party in any arbitration shall be eligible for the award of all dispute resolution costs and expenses, including attorney's fees through all tiers of dispute resolution, including mediation, if so awarded by the arbitrator or court of jurisdiction.

19. Entire Agreement/Authority

This Agreement, exhibits, and any other attachments constitute the entire Agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made shall be effective only in the specific instance and for the specific purpose given. The failure of Ride Connection to enforce any provision of this Agreement shall not constitute a waiver by Ride Connection of that or any other provision. The individuals signing below represent and warrant that they have authority to bind the party for which they sign.

20. Severability

If any provision of this Subcontract will be held to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable. If a court or arbitrator finds that any provision of this Subcontract is invalid or unenforceable, but that by limiting such provision, it would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited.

21. Surviving Provisions

Notwithstanding termination or expiration of this Agreement, the following provisions shall survive and continue to be in full force and effect: 1D (Audit); 2A (Recordkeeping); 6 (Confidential Information); 7 (Indemnification); 8 (Workers Compensation Insurance); 9 (Insurance); 17 (Governing Law); 18 (Dispute Resolution); and 22 (Surviving Provisions).

22. Prompt Payment

Subrecipient shall make payment promptly, as due, to all persons supplying to the Subrecipient labor or material for the performance of the work provided for in the contract. At a minimum, Subrecipient shall pay subcontractors no later than thirty (30) days from receipt of payment from Ride Connection. Subrecipient shall not hold retainage from subcontractors.

23. Agreement Documents

This Agreement consists of this document and the following documents, all of which are attached hereto and incorporated herein reference:

- Exhibit A: Scope of Work
Exhibit B: Federal Terms and Conditions
Exhibit C: Funding Information
Exhibit D: Lobbying Certificate (signature required)
Exhibit E: Nondiscrimination Certificate
Exhibit F: Reporting Requirements
Exhibit G: Vehicle Maintenance Requirements and Program (signature required)
Exhibit H: Vehicle and Equipment Information and Inventory

WISHING TO BE LEGALLY BOUND, the parties have caused this Agreement to be executed below by each party's duly authorized representative:

RIDE CONNECTION, INC.

Signature

Printed Name

Title

Date

CLACKAMAS COUNTY

Commissioner: Jim Bernard, Chair

Commissioner: Sonya Fischer

Commissioner: Ken Humbertson

Commissioner: Paul Savas

Commissioner: Martha Schrader

Signing on Behalf of the Board:

By: _____
Rich Swift, Director
Health, Housing and Human Services

Dated: _____

Approved to Form:

By: _____
Clackamas County Council

Dated: _____

September 20, 2018

Board of County Commissioner
Clackamas County

Members of the Board:

Approval of Agreement #18568 with
Ride Connection, Inc. to Provide Funding for Rides Provided by
Volunteer Drivers under the Vets Drive Vets Program

Purpose/Outcomes	Social Services-Transportation Reaching People and Senior Center based transportation services to assist older and disabled county residents in meeting their transportation needs to conduct their personal business, grocery shop, medical and/or other appointments.
Dollar Amount and Fiscal Impact	Agreement Amount \$5,047. The contract is funded through the agreements with State of Oregon, Elderly and Disabled Transportation Fund – Federal Transit Administration 5310 Grant.
Funding Source	Federal Transit Administration 5310 Grant. No County General Funds are involved
Duration	Effective July 1, 2018 and terminates on June 30, 2019
Previous Board Action	None
Strategic Plan Alignment	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 needs of older adults in the community.
Contact Person	Brenda Durbin, Director, Social Services Division 503-655-8641
Contract No.	8992

BACKGROUND:

The Social Services Division of the Health, Housing and Human Services request approval of Agreement #18568 with Ride Connection, Inc. This contract provides funding for rides provided throughout the County by volunteer drivers of the Clackamas County Transportation Consortium. This Agreement provides continued funding for FY2018-19 to pay a mileage reimbursement stipend to volunteer drivers of the Vets Driving Vets program for transportation services they provide to Clackamas County seniors and persons with disabilities. These funds help residents to remain independent and engaged in their community as long as possible.

Any disabled adult or person over the age of 60 living in Clackamas has access to transportation services through either their local Adult/Senior Community Centers or the Social Services Transportation Reaching People (TRP) program. The Vets Driving Vets program provide an additional flexible resource to these residents. Someone in need of transportation services who has a friend or neighbor who is willing to meet some of their transportation needs, and both rider and driver are veterans, can register with the Social Services TRP program. After completing a background check and training, the driver can be reimbursed for approved mileage. The Rider and Driver coordinate the dates and times of these rides which provides the flexibility to meet the Riders evening and weekend

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www.clackamas.us/community_health


transportation needs that other programs cannot currently provide. These volunteer drivers undergo the same screening and receive the same training as all the other Clackamas County Transportation Consortium volunteer and paid drivers.

This contract is late due to Ride Connection not being able to release agreements/modifications to its sub-contractors until their funding source released their contract and approved the Subrecipient agreements issued by Ride Connection. This resulted in the delay of Ride Connection sending out its contracts for FY18-19. County Council reviewed and approved this agreement on 9/10/18. No County General 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.

Respectfully submitted,



Richard Swift, Director
Health, Housing and Human Services

**SERVICES AGREEMENT #18568
BETWEEN
RIDE CONNECTION INC. and Clackamas County Consortium**

PARTIES:

1. Ride Connection, Inc. ("Ride Connection" or "Recipient"), and
2. Clackamas County Consortium ("Subrecipient")

RECITALS:

- A. In the reauthorization of the Transportation Bill (MAP-21) signed into law on July 6, 2012, federal funding was established for programs that meet the transportation needs of older adults and people with disabilities when the transportation service provided is unavailable, insufficient, or inappropriate to meeting these needs.
- B. Pursuant to federal requirements, a selection process has been conducted and Subrecipient was selected for a project through this process.
- C. Ride Connection and Subrecipient enter into this Subrecipient Agreement (the "Agreement") for the purpose of procuring Subrecipient's services, for which payment in part shall be from 5310 Funds.

AGREEMENTS:

1. General

- A. Scope of Agreement - This Agreement contains the terms and conditions that governs all services, and deliverables, (the "Services") to be performed by Subrecipient during the Term of this Agreement, which shall be amended as needed for one or more projects. However, execution of this Agreement does not obligate Ride Connection to award any Services to Subrecipient, other than the initial scope of Services attached in Exhibit A.
 - (1) This Agreement consists of this document, all Exhibits or other attachments, and other documents referenced herein and incorporated by this reference. Subrecipient shall comply with all applicable federal laws, regulations, executive orders, circulars, rules, policies, procedures and directives, whether or not expressly set forth in this Agreement, including but not limited to the following, which are incorporated into and made a part hereof: (1) the terms and conditions applicable to a "Recipient" set forth in the Prime Contract; (2) OMB Circular 2 CFR 200 (3) FTA Master Agreement, (4) Annual Certifications and Assurances, (5) FTA C 9070.1G.
- B. Scope of Services and Changes - Subrecipient agrees that it is under a continuing obligation to comply with the foregoing requirements, as they be modified or amended from time to time. Subrecipient further agrees to execute the funded activities described in Exhibit A,

in accordance with the terms of those requirements, as they may be amended during the term of this Agreement. This Agreement is subject to any amendments required as a result of agreement between TriMet and Ride Connection or pass-through obligations affecting Subrecipient's scope of Services, and is hereby amended to incorporate those changes. In the event any change to the Services as requested by Ride Connection results in a material increase or decrease in the Services, then an equitable adjustment in the total compensation owed to Subrecipient by Ride Connection shall be determined by Ride Connection and subsequent payments adjusted accordingly. Similarly, if any change to the Services results in a material change to the project schedule, it shall also be accordingly determined and adjusted by Ride Connection after consultation with Subrecipient.

- C. Schedule - Subrecipient and Ride Connection agree that time is of the essence for all activities comprising the Services under this Agreement.
- D. Audit Right - Subrecipient agrees that Ride Connection rights of audit and review under Paragraph 2 of this Agreement specifically include Subrecipient's financial records, management and program systems, and any associated records. Subrecipient shall comply with any monitoring and audit requirements established by Ride Connection pertaining to this Agreement.
 - (1) In the event that any audit or review of Subrecipient's records reveals a variance of Five Percent (5%) or more in cost overruns or charges in excess of any agreed upon price, then Ride Connection's costs of audit or review shall be reimbursed immediately by Subrecipient.
- E. Subcontracts - Subrecipient shall not enter into subcontracts for performance of Services under this Agreement except as may be specifically authorized by this Agreement in the attached and incorporated Exhibit A. Subrecipient shall not be relieved of any responsibility for performance of Subrecipient's duties under this Agreement, regardless of any subcontract entered into. Subrecipient agrees that any subcontractor performing services under this Agreement shall comply with the requirements of this Agreement including FTA third-party agreement contract provisions and requirements, as may be amended, and shall enter into a written agreement with each subcontractor requiring the incorporation of those requirements as applicable to each tier. Any delay or defect in the performance of any part of Subrecipient's Services shall not relieve Subrecipient of its primary obligation under this Agreement to ensure timely and satisfactory performance of all the Services. Any subcontractor delay or defect in performance under this Agreement shall be subject to the indemnification provisions of Section 7.
 - (1) Subrecipient acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies" 49 CFR Part 31, apply to its actions pertaining to the Services under this Agreement. Upon execution of this Agreement, Subrecipient certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make or cause to be made pertaining to this Agreement. In addition to other penalties that may be applicable, Subrecipient acknowledges that if it makes, or causes to be made a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the

right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on Subrecipient to the extent the Federal Government deems appropriate.

- (2) Subrecipient also acknowledges that if it makes, or causes to be made a false, fictitious or fraudulent claim, statement, submission, or certification to the Federal Government under an Agreement connected with a project that is financed in whole or part with Federal assistance awarded by FTA under 49 U.S.C. Chapter 53 or any other Federal law, the Government reserves the rights to impose penalties of 18 U.S.C. 1001 and 49 U.S.C 5323(1) on Subrecipient, to the extent the Federal Government deems appropriate.
 - (3) Subrecipient agrees to include the above two clauses in each subcontract it awards under this Agreement financed in whole or in part with FTA funds. It is further agreed that the clauses shall not be modified except to identify the subcontractor who will be subject to the provisions.
- G. **Drug-Free Covered Agreement** - This Agreement is a covered transaction for purposes of 49 CFR Part 29. As such, Subrecipient is required to verify that none of Subrecipient, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945. By signing this Agreement, Subrecipient makes a material representation of fact relied upon by Ride Connection that Subrecipient has complied with 49 CFR Part 29. If it is later determined that Subrecipient knowingly rendered an erroneous representation of compliance with 49 CFR Part 29, in addition to and without limitation of the remedies available to Ride Connection, TriMet and the Federal Government may pursue any available remedies, including but not limited to suspension and/or debarment. In addition, Subrecipient is required to comply with 49 CFR 29, Subpart C throughout the term of this Agreement, and must include the requirement to comply with 49 CFR Part 29, Subpart C in any lower tier covered transaction it enters into.

2. Inspection of Records and Services

- A. **Recordkeeping Term** - Subrecipient shall maintain intact and readily accessible a complete set of records relating to this Agreement for six (6) years after the date of transmission of the final expenditure report for the Project or if expiration is later, upon expiration of the Agreement, including but not limited to all data, documents, reports, records, contracts and supporting materials as the Federal government, TriMet or Ride Connection may require. Subrecipient shall permit Ride Connection, TriMet, ODOT or the Secretary of State of the State of Oregon, the U.S. Department of Transportation, and the Comptroller General of the United States, and all of their respective authorized representatives, to inspect and audit all work, Services, materials, payrolls, books, accounts, and other data and records of Subrecipient relating to its performance under this Agreement until the expiration of six (6) years after the date of transmission of the final expenditure report for the Project or expiration of the Agreement, if expiration is later. Upon request by Ride Connection, Subrecipient shall provide Ride Connection access to and shall provide a copy of records maintained by Subrecipient under this Agreement.

- B. Annual Self-Audit - Subrecipient shall follow the requirements stated in the Single Audit Act, 31 U.S.C. 7501 et seq. If Subrecipient expends Federal funds in excess of \$750,000 from all sources in its fiscal year, Subrecipient is subject to audit conducted in accordance with OMB Circular 2 CFR 200, Audits of States, Local governments, Non-profit Institutions. Subrecipient shall, at Subrecipient's own expense, submit to Ride Connection, 9955 NE Glisan St, Portland, OR 97220, an annual audit covering the funds expended under this Agreement and shall submit the annual audit of any subcontractor of Subrecipient responsible for the financial management of funds received under this Agreement.
- (1) Subrecipient shall at Subrecipient's expense, submit to Ride Connection, 9955 NE Glisan St, Portland, OR 97220, a copy of any annual audit covering the funds expended under this Agreement by Subrecipient or any subcontractor of Subrecipient receiving funds as a result of this Agreement that is performed due to state law or regulation or conducted as an independent activity. Subrecipient shall also at its expense, submit to Ride Connection at the foregoing address, a copy of the management letter that accompanies an annual audit covering the funds expended under this Agreement by Subrecipient or any subcontractor of Subrecipient receiving funds as a result of this Agreement.
- C. Audit Passthrough to Subcontractors - Subrecipient further agrees to include in any third party contract under this Agreement a provision to the effect that the contractor must retain and grant Ride Connection, TriMet, ODOT, the U.S. Department of Transportation, and the Comptroller General of the United States, or any of their authorized representatives access to all books, documents, papers and records directly pertinent to the contract, for the purpose of making audit, examination, excerpts and transcriptions, until the expiration of six (6) years (three years for federal retention requirements and an additional three years for state retention requirements) after final payment under the contract or expiration of the contract if expiration is later.
- (1) The periods of access and examination described in subparagraphs A and B of this Paragraph for records that relate to (1) disputes between Ride Connection and Subrecipient, (2) litigation or settlement of claims arising out of the performance of this contract, or (3) costs and expenses of this Agreement as to which exception has been taken by the Comptroller General or any of his or her duly authorized representatives, shall continue until all disputes, claims, litigation, appeals and exceptions have been resolved. Subrecipient agrees to include in any third party contract under this Agreement a provision to this effect.
- D. The foregoing provisions are in addition to and not in lieu of any other applicable federal or state laws, regulations, rules, circulars or directives. Subrecipient agrees to include in any third party contract under this Agreement a provision to this effect.

3. Reporting Requirements

- A. Monthly reports shall be due on the 20th day after the end of the preceding month.
- B. Reports shall include complete information required by FTA Circular 5010.1C, Chapter 1,

Section (5) Reporting Requirements, particularly the status of grant activity line items, budget and schedule changes, milestone revisions or cost variances, outstanding claims, change orders and other information that the circular may require. Ride Connection may require additional reporting information from the Subrecipient.

4. Compensation

- A. Agreed Price - The maximum funding to be disbursed to Subrecipient under this Agreement is \$5,047.00. Ride Connection shall pay Subrecipient for full, complete, and satisfactory performance of the Services, upon Ride Connection's receipt of payment from TriMet for Subrecipient's Services, at the price and/or rates mutually agreed by the parties under this Agreement for the applicable project. No other costs, rates, or fees shall be payable to the Subrecipient. Except as set forth in this Agreement, Subrecipient shall bear sole responsibility for all additional expenses incurred in connection with its performance of the Services.
- B. Payment Terms - Subrecipient shall submit to Ride Connection monthly invoices and any other documentation requested by Ride Connection for payment at such times as will enable Ride Connection to apply for payment from TriMet in a timely manner. When required by Ride Connection, and as a condition precedent to any payment, and particularly final payment, Subrecipient shall provide, in a form satisfactory to Ride Connection, lien releases, claim waivers, and affidavits of payment from Subrecipient, and its lower-tier subcontractors and suppliers of any tier, for any portion of Subrecipient's Services.
- C. Withholding - Ride Connection may withhold payment of funds or offset future payments against funds already paid to Subrecipient if the funds are not being used in accordance with this Agreement, all required reporting has not been submitted, or there are any unresolved audit findings relating to the Subrecipient's performance, subject to the dispute resolution process in section 18. Subrecipient shall assure that funds allocated hereunder are used only for the purposes permitted, and shall, upon breach of conditions that require Ride Connection to reimburse funds to TriMet or otherwise incur costs from TriMet withholding of funds, hold harmless and indemnify Ride Connection for an amount equal to the funds required to be repaid or withheld plus any additional costs or expenses incurred by Ride Connection. In the event a creditor imposes any lien or claim for labor, fringe benefits, taxes, supplies, materials, equipment rental or other charges against the Services covered by this Agreement, thereby legally encumbering the Services, the amount of such obligation may be deducted by Ride Connection from any payment or payments, including retainage, made under this Agreement.

5. Independent Contractor

Subrecipient is an independent contractor for all purposes under this Agreement, and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement, including but not limited to workers compensation, unemployment taxes and state and federal income tax withholdings. Subrecipient shall have sole control and supervision over the manner in which services are performed, subject only to consistency with the terms of this Agreement. Neither Subrecipient, nor its officers, directors,

employees, subcontractors or drivers, are officers, employees or agents of Ride Connection as those terms are used in ORS 30.265. Subrecipient, its directors, officers, employees, subcontractors or drivers shall not hold themselves out either explicitly or implicitly as officers, employees or agents of Ride Connection for any purpose whatsoever. Nothing in this Agreement shall be deemed to create a partnership, franchise or joint venture between the parties.

6. Confidential Information

Subrecipient agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Subrecipient uses in maintaining the confidentiality of its own confidential information, but no less stringent as reasonable care, and shall not, without the disclosing entity's prior written consent, 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 the provision of Services hereunder. Subrecipient shall advise Ride Connection immediately if Subrecipient learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Section, and Subrecipient shall, at its expense, cooperate with Ride Connection in seeking injunctive or other equitable relief against any such person.

7. Indemnification

- A. Indemnified Conditions - Subject to the Oregon Tort Claims Act and the Oregon Constitution, Subrecipient agrees to fully indemnify, defend, and hold harmless the State of Oregon, TriMet, Ride Connection and their directors, officers, employees and agents (the "Indemnitees") from and against all claims, suits, actions of whatsoever nature, damages or losses, and all expenses and costs incidental to the investigation, resulting from or arising out of the activities of Subrecipient, its officers, employees or agents under this Agreement, to the fullest extent permitted by law, including but not limited to the following:
- (i) Bodily injury or death to any person;
 - (ii) Property damage to any personal or real property owned by anyone;
 - (iii) Failure to comply with any health and safety, corporate or administrative ordinances, regulations, orders, permits, licenses, and laws;
 - (iv) Infringement of any intellectual property or other third party rights;
 - (v) Discharge or causing the discharge of any hazardous or polluting substance; and
 - (vi) Liens, claims, demands, or suits of whatever nature brought by Subrecipient's laborers, subcontractors, material and equipment providers, or other creditors to enforce a right of any kind made upon or against the Services or the real property where the Services are performed.
- B. Indemnity by Subcontractors - Subrecipient agrees to include in any third party contract under this Agreement a provision to the effect that the contractor shall fully indemnify, hold harmless and defend, and hold harmless the State of Oregon, TriMet, Ride Connection

and their directors, officers, employees and agents (the "Indemnitees") from and against all claims, suits, actions of whatsoever nature, damages or losses, and all expenses and costs incidental to the investigation, resulting from or arising out of the activities of such subcontractor, its officers, employees or agents under the contract between Subrecipient and such subcontractor procured pursuant to this Agreement.

- C. Indemnatee Consent - Subrecipient shall not defend any claim in the name of the State of Oregon, any Agency of the State of Oregon, TriMet, or Ride Connection, not purport to act as legal representative of same, without the prior written consent of the Oregon Attorney General, TriMet, or Ride Connection.
- D. Limitation on Indemnification - Subrecipient's indemnification above shall not include any liability to the extent caused by or resulting from the concurrent negligence of any Indemnitees. Any legal limitations now or hereafter in effect affecting the validity or enforceability of the indemnity, defense and hold harmless obligations assumed by Subrecipient pursuant to this Agreement shall operate to amend the Subrecipient's obligations only to the minimum extent necessary for the indemnity, defense and hold harmless contractual provision to conform with the requirements of such limitations, and as so modified, the obligations shall continue in full force and effect.
- D. No Consequential Damages – Neither Ride Connection nor any of its officers, employees, directors, and agents shall have any liability to Subrecipient regardless of the theory of recovery, including breach of contract or negligence, to the other party for any indirect, incidental, special, or consequential damages, including but not limited to loss of revenue or profit, whether actual or anticipated, loss of use, failure to realize anticipated savings, loss of or damage to data or other commercial or economic loss.

8. Workers Compensation

Subrecipient, its subcontractors, if any, and all employers working under this Agreement are either subject employers under the Oregon Workers Compensation Law and shall comply with ORS 656.017, which requires them to provide workers compensation coverage for all their subject workers, or employers that are exempt under ORS 656.126(2). Subrecipient expressly waives any statutory or common law immunity, in accordance with the Oregon Revised Statutes, Vol. 14, Section 656, Revised Code of Washington, Title 51, as amended, or any other applicable laws or regulations that would otherwise shield an employer from insurance subrogation or other claims.

9. Insurance

- A. While this Agreement is in effect, Subrecipient agrees that it shall maintain in effect the insurance coverage set forth below, as well as to require any subcontractors it uses to agree to comply with the insurance requirements provided below. Failure of Ride Connection to demand such certificate or other evidence of full compliance with these insurance requirements, or failure of Ride Connection to identify a deficiency from evidence that is provided shall not be construed as a waiver of Subrecipient's obligation to require such insurance from its subcontractors.

Clackamas County is self-insured for workers' compensation, and general, auto and professional liability, in accordance with the provisions of ORS 30.272 (Tort Claims Act) and ORS 656.403 (Workers' Compensation). The County maintains an insurance fund from which to pay all costs and expenses relating to claims for which it is self-insured. The County's exposure for general, auto and professional liability is limited by ORS 30.272 to: \$115,800/\$579,000 property damage and \$1,412,000 total damages per occurrence.

B. Subrecipient's subcontractors, if any, shall be responsible for payment of all respective premiums and deductibles. Insurance shall be maintained of the types and in the amounts described below, and shall be from carriers acceptable to Ride Connection:

- (1) Commercial General Liability (CGL) Insurance covering bodily injury and property damage with a limit of not less than US\$1,000,000 each occurrence, and aggregate of US\$2,000,000.
- (2) Business Auto Liability Insurance covering bodily injury and property damage with a limit of not less than \$2,000,000 each accident. Such insurance shall cover liability arising out of the use of any auto (including owned, hired, and non-owned autos).
- (3) Workers Compensation and Employer's Liability Insurance. The employer's liability limit shall not be less than \$1,000,000 each accident for bodily injury by an accident and \$1,000,000 each employee for bodily injury by disease. The workers compensation limit shall be equivalent to or better than the Oregon statutory limits.
- (4) Sexual Abuse/Molestation coverage with limits no less than \$500,000 per occurrence/aggregate.
- (5) Tail Coverage, if any of the required insurance policies is on a "claims made" basis, such as professional liability insurance, the subcontractor 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 sub agreement for subcontractors, for a minimum of 24 months following the later of: (i) the Subrecipient's completion and TriMet's acceptance of all services required under this Agreement, and the subcontractors completion and Subrecipient's acceptance of all services required under the sub agreement or, (ii) the expiration of all warranty periods provided under the sub agreement with respect to the subcontractor. Notwithstanding the foregoing 24-month requirement, if the subcontractor 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 subcontractor may request and TriMet may grant approval of the maximum "tail" coverage period reasonably available in the marketplace. If TriMet approval is granted, the subcontractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.
- (6) The insurance required under this Paragraph shall:
Include Ride Connection, TriMet, ODOT, the State of Oregon, the Federal Transit Administration, and each of their respective directors, officers, agents, elected

officials, and employees as additional insureds with respect to work or operations connected with the Agreement, and

The Subrecipient or its insurer must provide 30 days' written notice to Ride Connection before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

10. Claims, Notice

- A. Notice Period - Subrecipient shall provide written notice of any claim under this Agreement to Ride Connection within five (5) business days of the circumstances giving rise to the claim or within sufficient time to allow Ride Connection to give notice to TriMet pursuant to the Prime Contract (whichever is sooner).
- B. Notice Content - Any claim by Subrecipient must set forth in detail the entitlement and quantum basis for Subrecipient's claim with supporting data and/or the entitlement basis to Ride Connection.
- C. Requirement to Continue Services - Whether or not Subrecipient has a claim pending with Ride Connection, Subrecipient shall continue performing Services under this Agreement. Any suspension of Services by Subrecipient, without written consent by Ride Connection, may be considered by Ride Connection as a material breach of this Agreement. Ride Connection does not waive the requirement for timely written notice and/or timely written submission of the Statement of Claim unless Ride Connection's waiver is unequivocal, explicit, and in writing.

11. Termination

Ride Connection may terminate this Agreement, in whole or in part, effective upon delivery of written notice to Subrecipient, or at such later date as may be established by Ride Connection, under any of the following conditions:

- A. Subrecipient fails to provide services called for by this Agreement within the time specified herein or any extension thereof;
- B. Subrecipient fails to comply with or perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from Ride Connection fails to correct such failures within 10 days or such longer period as Ride Connection may authorize;
- C. Ride Connection fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for the work provided in this Agreement, or if Ride Connection determines to terminate for its own convenience;
- D. Any laws, regulations, rules or guidelines are modified, changed or interpreted in such a way that financial assistance or purchase of equipment provided for in this Agreement is no longer allowable or is no longer eligible for funding proposed by this Agreement;

- E. Both parties agree that continuation of the Project would not produce results commensurate with the further expenditure of funds; or
- F. Subrecipient takes any action pertaining to this Agreement without the approval of Ride Connection and which under the provisions of this Agreement would have required the approval of Ride Connection.
- G. Subrecipient may terminate this Agreement, in whole or in part, upon 30 days written notice to Ride Connection

Any termination of this Agreement shall not prejudice any rights or obligations accrued to the parties prior to termination.

12. Compliance with Laws

Federal laws and regulations - In addition to those elsewhere specified, Subrecipient shall comply with any applicable federal, state and local laws, rules and regulations applicable to the project hereunder, including but not limited to the following: all federal, state and local statutes, regulations, administrative rules, executive orders, ordinances and other laws applicable to the Services. Subrecipient expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable: (i) Title VI of the Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659a.142; (iv) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations; (v) the Clean Air Act (42 U.S.C. 7401-7671q); (vi) the Water Pollution Control Act as amended (33 U.S.C. 1251-1387); (vii) Executive Order 11738; (viii) Environmental Protection Agency regulations (40 CFR part 15); and (ix) and all applicable standards, orders, regulations and administrative rules established pursuant to the foregoing laws.

Payment of taxes and business license - Subrecipient shall comply with all federal, state, and local employment and labor laws and regulations in all aspects of its operations, including, but not limited to, all applicable federal, state, or local labor or employment laws including but not limited to laws and regulations regarding hiring, training, assignments, promotions, discipline and/or discharge, including but not limited to the Services Contract Act ("SCA"), for which it is Subrecipient's sole responsibility to determine if the SCA applies to it and the Services. Ride Connection may from time to time at its sole discretion seek and obtain a certification from Subrecipient that it is in compliance with the foregoing, and Subrecipient will provide, upon reasonable request by Ride Connection, such documents and supporting materials to evidence Subrecipient's compliance with this Section.

ODOT Conflict of Interest Guidelines - If required applicable by ODOT, Subrecipient and its subcontractors shall comply with the ODOT Conflict of Interest ("COI") Guidelines and COI Disclosure Form. Subrecipient and, to the best of the undersigned's information, knowledge and Subrecipient's Associates (as defined in the COI Guidelines) are in compliance with and have no disclosures required per the COI Guidelines (available at the following Internet address: <http://www.oregon.gov/ODOT/CS/OPO/Pages/ae.aspx>); Subrecipient also confirms that no

Federal appropriated funds have been paid or will be paid, by or on behalf of Subrecipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

13. Term

This Agreement shall begin on 7/1/2018 and shall remain in effect through 6/30/2019 unless terminated sooner under the provisions of this Agreement.

14. Communications

All communications between the parties regarding this Agreement shall be directed to the parties' respective Project Managers as indicated below:

Ride Connection:
Dean Orr
Ride Connection
9955 NE Glisan St.
Portland, OR 97220

Subrecipient:
Stefanie Reid
Clackamas County Consortium
2051 Kaen Rd
Oregon City, OR 97045-1819

15. No Third Party Beneficiary

Ride Connection and Subrecipient are the only parties to this Agreement and, as such, are the only parties entitled to enforce its terms. Nothing in this Agreement gives or shall be construed to create or provide any legal right or benefit, direct, indirect or otherwise to any other party unless that party is individually identified by name herein and expressly described as an intended beneficiary of the terms of this Agreement.

16. Assignment

Subrecipient may not assign, delegate or subcontract any of its rights or obligations under this Agreement to any other party without the prior written consent of Ride Connection. Any assignment, delegation or subcontract in violation of this paragraph shall be null and void, and shall constitute grounds for immediate termination by Ride Connection.

17. Governing Law

This Agreement shall be governed by the laws of the State of Oregon, to the express exclusion of all other choice of law alternatives.

18. Dispute Resolution

A. Executive Negotiation - The Parties shall attempt in good faith to resolve any dispute

arising out of or relating to this Agreement, or any breach hereof or any Services performed hereunder, promptly by negotiation between executives who have authority to settle the controversy. Any party may give the other party written notice of any dispute not resolved during the normal course of business. Such notice shall include a statement of that party's position and documentation supporting that parties claim and the name and title of the executive who will be representing that party and any other person who will accompany the executive. The receiving party shall respond in kind within five (5) days of the date of notice. Within ten (10) days after delivery of the initial notice, the executives of both parties shall meet at a mutually acceptable time and place and use good faith efforts to resolve the dispute. If dispute is not then resolved, either party may give the other written notice that these executive negotiations are concluded. Negotiations pursuant to this Section shall be confidential and shall be treated as compromise and settlement negotiations for purposes of Law and rules of evidence. Time requirements herein may be modified upon mutual written consent of the parties.

- B. Mediation - In the event that the parties are unable to settle the dispute through direct negotiations as set forth above, all remaining controversies or claims shall then be submitted to mediation within ten (10) days from written notice of concluded negotiations following the Mediation Rules published by the Arbitration Service of Portland, Inc. Unless the parties agree otherwise, mediation shall be held in Portland, Oregon. This Agreement to mediate and any other agreement or consent to mediate entered into in accordance with this Agreement shall be specifically enforceable under the prevailing law of any court having jurisdiction.
- C. Arbitration - In the event that the parties are unable to settle the dispute through negotiation and mediation as set forth above, either party may seek final resolution through binding arbitration pursuant to the Commercial Arbitration Rules of the Arbitration Service of Portland, Inc. for one arbitrator. The arbitrator's decision shall be binding, final, and enforceable by any court with appropriate jurisdiction in accordance with the Rules of the Arbitration Serviced of Portland, Inc.
- D. Costs and Award – The prevailing party in any arbitration shall be eligible for the award of all dispute resolution costs and expenses, including attorney's fees through all tiers of dispute resolution, including meditation, if so awarded by the arbitrator or court of jurisdiction.

19. Entire Agreement/Authority

This Agreement, exhibits, and any other attachments constitute the entire Agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made shall be effective only in the specific instance and for the specific purpose given. The failure of Ride Connection to enforce any provision of this Agreement shall not constitute a waiver by Ride Connection of that or any other provision. The individuals signing below represent and warrant that they have authority to bind the party for which they sign.

20. Severability

If any provision of this Subcontract will be held to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable. If a court or arbitrator finds that any provision of this Subcontract is invalid or unenforceable, but that by limiting such provision, it would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited.

21. Surviving Provisions

Notwithstanding termination or expiration of this Agreement, the following provisions shall survive and continue to be in full force and effect: 1D (Audit); 2A (Recordkeeping); 6 (Confidential Information); 7 (Indemnification); 8 (Workers Compensation Insurance); 9 (Insurance); 17 (Governing Law); 18 (Dispute Resolution); and 22 (Surviving Provisions).

22. Prompt Payment

Subrecipient shall make payment promptly, as due, to all persons supplying to the Subrecipient labor or material for the performance of the work provided for in the contract. At a minimum, Subrecipient shall pay subcontractors no later than thirty (30) days from receipt of payment from Ride Connection. Subrecipient shall not hold retainage from subcontractors.

23. Agreement Documents

This Agreement consists of this document and the following documents, all of which are attached hereto and incorporated herein reference:

- Exhibit A: Scope of Work
- Exhibit B: Federal Terms and Conditions
- Exhibit C: Funding Information
- Exhibit D: Lobbying Certificate (signature required)
- Exhibit E: Nondiscrimination Certificate
- Exhibit F: Reporting Requirements

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

WISHING TO BE LEGALLY BOUND, the parties have caused this Agreement to be executed below by each party's duly authorized representative:

RIDE CONNECTION, INC.

Signature

Printed Name

Title

Date

CLACKAMAS COUNTY

Commissioner: Jim Bernard, Chair

Commissioner: Sonya Fischer

Commissioner: Ken Humbertson

Commissioner: Paul Savas

Commissioner: Martha Schrader

Signing on Behalf of the Board:

By: _____
Rich Swift, Director
Health, Housing and Human Services

Dated: _____

Approved to Form:

By: _____
Clackamas County Council

Dated: _____

September 20, 2018

Board of County Commissioner
Clackamas County

Members of the Board:

Approval of Agreement #18573 with
Ride Connection, Inc. to Provide Funding for Specialized Service Rides Provided
by Members of the Clackamas County Transportation Consortium

Purpose/Outcomes	Social Services-Transportation Reaching People and Senior Center based transportation services to assist older and disabled county residents in meeting their transportation needs to conduct their personal business, grocery shop, medical and/or other appointments.
Dollar Amount and Fiscal Impact	Agreement Amount \$152,254. This agreement is funded through the agreements with State of Oregon, Special Transportation Formula Fund (STF).
Funding Source	State of Oregon, ODOT-STF funds. No County General Funds are involved
Duration	Effective July 1, 2018 and terminates on June 30, 2019
Previous Board Action	010517-A3
Strategic Plan Alignment	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 needs of older adults in the community.
Contact Person	Brenda Durbin, Director, Social Services Division 503-655-8641
Contract No.	H3S# 8993

BACKGROUND:

The Social Services Division of the Health, Housing and Human Services request approval of Agreement #18573 with Ride Connection, Inc. This agreement provides State of Oregon, Special Transportation Formula (STF) funding for rides provided throughout the County by the Hoodland/Welches, NCPRD-Milwaukie, Molalla and Sandy Community Centers. This agreement provides continued funding for FY2018-19 to reimburse these members of the Clackamas County Transportation Consortium for transportation services they provide to Clackamas County seniors and persons with disabilities that reside outside the regular service area of the Center. These funds help residents to remain independent and engaged in their community as long as possible.

This agreement is specific to the (4) community centers listed above to provide rides in lift equipped mini-buses and/or vans to residents that are outside their Center's service area who wish to come to the Center for activities and/or meals. The transportation services provided by senior centers are primarily to the centers for participation in the nutrition programs and the various services and recreational programs offered at the centers. However, the Centers also provide group transportation for shopping, personal business, and medical appointments in their local area. This agreement also

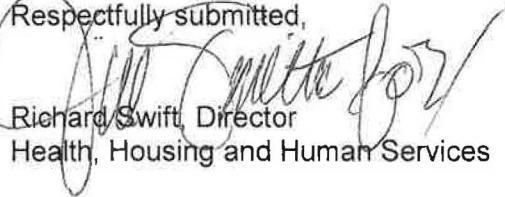
provides funding for these Centers to use taxis to provide transportation to medical facilities outside their service area. In general, transportation is provided weekdays between 8:00 am and 5:00pm.

This agreement is late due to Ride Connection not being able to release agreements/modifications to its sub-contractors until their funding source released their agreement and approved the Subrecipient agreements issued by Ride Connection. This resulted in the delay of Ride Connection sending out its agreements for FY18-19. County Council reviewed and approved this agreement on 9/12/18. No County General Funds are involved. This agreement is the first year of the two-year STF grant awarded during the January 2017 application cycle.

RECOMMENDATION:

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

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Richard Swift", is written over the printed name and title.

Richard Swift, Director
Health, Housing and Human Services

**SERVICES AGREEMENT #18573
BETWEEN
RIDE CONNECTION INC. and Clackamas County Consortium**

PARTIES:

1. Ride Connection, Inc. ("Ride Connection" or "Recipient"), and
2. Clackamas County Consortium ("Subrecipient")

RECITALS:

1. Ride Connection and Subrecipient enter into this Agreement for the sole purpose of disbursing the approved STF and other funds to Subrecipient for Subrecipient's accomplishment of the Project(s). **Maximum amount of Grant funds shall not exceed \$152,254. These funds shall be used solely for the Project(s) in Exhibit A, and not be used for any other purpose.**
2. Oregon Department of Transportation ("ODOT") has made funds available to Tri-County Metropolitan Transportation District of Oregon ("TriMet") pursuant to the Federal Transportation Administration Program for Enhanced Mobility of Seniors and Individuals With Disabilities, 49 U.S.C. §5310 ("5310 Funds"). Ride Connection is a pass-through recipient of these funds through Grant Agreement/Contract No. JP180303ZC (the "Prime Contract") from TriMet.
3. Oregon Department of Transportation ("ODOT") has made Special Transportation Funds (STF) funds available to Tri-County Metropolitan Transportation District of Oregon ("TriMet"). Ride Connection is a pass-through recipient of these funds through Grant from TriMet.
4. Tri-County Metropolitan Transportation District of Oregon ("TriMet") has made general funds available to Ride Connection, to pass-through to Clackamas County Consortium which provides transportation services inside the TriMet services District.
5. Subrecipient and Ride Connection agree that time is of the essence for all activities comprising the Services under this Agreement.

AGREEMENTS:

1. General

- A. Subrecipient agrees to comply with and use the STF funds in accordance with the terms of this Agreement including the terms of ORS 391.80 through 391.830 and the provisions of OAR Chapter 732 as may be amended, all of which are incorporated into and made part of

this Agreement. Specific contractual requirements applicable to Subrecipient under this Agreement are set forth in Exhibits A, B, C, D, E, and F which are incorporated into and made part of this Agreement. Any conflict among the terms of this Agreement shall be resolved in accordance with the following order of precedence: this Agreement form, Exhibit A, Exhibit B, Exhibit C, and Exhibit D. This Agreement is subject to any agreements between TriMet, and ODOT, and Ride Connection regarding disbursement of STF and other funds, and shall be amended to incorporate those changes.

Subrecipient agrees to comply with all Subrecipient monitoring policies, procedures, and other requirements that may be established by Ride Connection, including but not limited to Title VI compliance.

Subrecipient shall not be relieved of any responsibility of performance of Subrecipient's duties under this Agreement, regardless of any subcontract entered into. Subrecipient shall require any subcontractor performing services under this Agreement to enter into a written agreement with Subrecipient before the commencement of services, which shall require the subcontractor to comply with ORS 391.800 through 391.830, OAR Chapter 732, as may be amended, and the terms of this Agreement. Subrecipient shall specifically include in all subcontracts a requirement that the subcontractor shall be bound by the following paragraphs of this agreement as if the subcontractor were the Subrecipient: Paragraphs 2 through 5.

- B. **Scope of Services and Changes** - Subrecipient agrees that it is under a continuing obligation to comply with the foregoing requirements, as they be modified or amended from time to time. Subrecipient further agrees to execute the funded activities described in Exhibit A, in accordance with the terms of those requirements, as they may be amended during the term of this Agreement. This Agreement is subject to any amendments required as a result of agreement between TriMet, ODOT, and Ride Connection or pass-through obligations affecting Subrecipient's scope of Services, and is hereby amended to incorporate those changes. In the event any change to the Services as requested by Ride Connection results in a material increase or decrease in the Services, then an equitable adjustment in the total compensation owed to Subrecipient by Ride Connection shall be determined by Ride Connection and subsequent payments adjusted accordingly.
- C. **Audit Right** – Subrecipient agrees that Ride Connection rights of audit and review under Paragraph 2 of this Agreement specifically include Subrecipient's financial records, management and program systems, and any associated records. Subrecipient shall comply with any monitoring and audit requirements established by Ride Connection pertaining to this Agreement.

In the event that any audit or review of Subrecipient's records reveals a variance of Five Percent (5%) or more in cost overruns or charges in excess of any agreed upon price, then Ride Connection's costs of audit or review shall be reimbursed immediately by Subrecipient.

- D. **Subcontracts** – Subrecipient shall not enter into subcontracts for performance of Services under this Agreement except as may be specifically authorized by this Agreement in the attached and incorporated Exhibit A. Subrecipient shall not be relieved of any

responsibility for performance of Subrecipient's duties under this Agreement, regardless of any subcontract entered into. Subrecipient agrees that any subcontractor performing services under this Agreement shall comply with the requirements of this Agreement including FTA third-party agreement contract provisions and requirements, as may be amended, and shall enter into a written agreement with each subcontractor requiring the incorporation of those requirements as applicable to each tier. Any delay or defect in the performance of any part of Subrecipient's Services shall not relieve Subrecipient of its primary obligation under this Agreement to ensure timely and satisfactory performance of all the Services. Any subcontractor delay or defect in performance under this Agreement shall be subject to the indemnification provisions of Section 7.

- (1) Subrecipient acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies" 49 CFR Part 31, apply to its actions pertaining to the Services under this Agreement. Upon execution of this Agreement, Subrecipient certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make or cause to be made pertaining to this Agreement. In addition to other penalties that may be applicable, Subrecipient acknowledges that if it makes, or causes to be made a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on Subrecipient to the extent the Federal Government deems appropriate.
 - (2) Subrecipient also acknowledges that if it makes, or causes to be made a false, fictitious or fraudulent claim, statement, submission, or certification to the Federal Government under an Agreement connected with a project that is financed in whole or part with Federal assistance awarded by FTA under 49 U.S.C. Chapter 53 or any other Federal law, the Government reserves the rights to impose penalties of 18 U.S.C. 1001 and 49 U.S.C 5323(1) on Subrecipient, to the extent the Federal Government deems appropriate.
 - (3) Subrecipient agrees to include the above two clauses in each subcontract it awards under this Agreement financed in whole or in part with FTA funds. It is further agreed that the clauses shall not be modified except to identify the subcontractor who will be subject to the provisions.
- E. **Drug-Free Covered Agreement** - This Agreement is a covered transaction for purposes of 49 CFR Part 29. As such, Subrecipient is required to verify that none of Subrecipient, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945. By signing this Agreement, Subrecipient makes a material representation of fact relied upon by Ride Connection that Subrecipient has complied with 49 CFR Part 29. If it is later determined that Subrecipient knowingly rendered an erroneous representation of compliance with 49 CFR Part 29, in addition to and without limitation of the remedies available to Ride Connection, TriMet and the Federal Government may pursue any available remedies, including but not limited to suspension and/or debarment. In addition, Subrecipient is required to comply with 49 CFR 29, Subpart C throughout the term of this Agreement, and

must include the requirement to comply with 49 CFR Part 29, Subpart C in any lower tier covered transaction it enters into.

2. Audit Requirements/Financial Management Procedure

- A. STF funds disbursed by this Agreement shall be specifically addressed in Subrecipient's annual audits, and the terms of Exhibit B shall apply. Ride Connection may request additional information including, but not limited to, audits of specific projects or services. Subrecipient will adhere to financial management procedures in accordance with Oregon and other applicable laws, and specifically as provided by ORS 391.800 through 391.830 and OAR Chapter 732 in addition to the requirements set forth in Exhibit B.

Subrecipient shall comply with applicable federal, state, and local laws as well as generally accepted accounting principles (GAAP) for accounting, billing, and reporting requirements with STF funds. **Subrecipient shall document the expense of all funds disbursed by Ride Connection under this Agreement.**

- B. Annual Self-Audit - Subrecipient shall follow the requirements stated in the Single Audit Act, 31 U.S.C. 7501 et seq. If Subrecipient expends Federal funds in excess of \$750,000 from all sources in its fiscal year, Subrecipient is subject to audit conducted in accordance with OMB Circular 2 CFR 200, Audits of States, Local governments, Non-profit Institutions. Subrecipient shall, at Subrecipient's own expense, submit to Ride Connection, 9955 NE Glisan St, Portland, OR 97220, an annual audit covering the funds expended under this Agreement and shall submit the annual audit of any subcontractor of Subrecipient responsible for the financial management of funds received under this Agreement.
- C. Audit Passthrough to Subcontractors - Subrecipient further agrees to include in any third party contract under this Agreement a provision to the effect that the contractor must retain and grant Ride Connection, TriMet, ODOT, the U.S. Department of Transportation, and the Comptroller General of the United States, or any of their authorized representatives access to all books, documents, papers and records directly pertinent to the contract, for the purpose of making audit, examination, excerpts and transcriptions, until the expiration of six (6) years (three years for federal retention requirements and an additional three years for state retention requirements) after final payment under the contract or expiration of the contract if expiration is later.
- (1) The periods of access and examination described in subparagraphs A and B of this Paragraph for records that relate to (1) disputes between Ride Connection and Subrecipient, (2) litigation or settlement of claims arising out of the performance of this contract, or (3) costs and expenses of this Agreement as to which exception has been taken by the Comptroller General or any of his or her duly authorized representatives, shall continue until all disputes, claims, litigation, appeals and exceptions have been resolved. Subrecipient agrees to include in any third party contract under this Agreement a provision to this effect.

- D. The foregoing provisions are in addition to and not in lieu of any other applicable federal or state laws, regulations, rules, circulars or directives. Subrecipient agrees to include in any third party contract under this Agreement a provision to this effect.

3. Reporting Requirements

In order to be reimbursed, Subrecipient shall submit monthly reports to Ride Connection no later than 20 days after the close of each month. Monthly reports should be remitted via Ride Connection's established process that meets the requirements of Exhibits A, B, and E.

Reports must be in a format acceptable to Ride Connection and include:

- A statement of revenues and expenses for each month, including documentation of local match contributions and expenses.
- A description project deliverables, tasks, and schedule completed for each month, including a description of how stated goals are being met.

Reports shall include complete information required by FTA Circular 5010.1C, Chapter III, Section (3) Reporting Requirements, particularly the status of grant activity line items, budget and schedule changes, milestone revisions or cost variances, outstanding claims, change orders and other information that the circular may require. Ride Connection may require additional reporting information from the Subrecipient.

Ride Connection, TriMet, and the State reserve the right to request additional information as may be necessary to comply with state reporting requirements.

4. Withholding of Funds

In addition to any other provisions of this Agreement including but not limited to Exhibits A, B, C, D, E, and F, Ride Connection may withhold payment of funds or offset future payments against funds already paid to Subrecipient if the funds are not being used in accordance with this Agreement, all required reporting has not been submitted, or there are any unresolved audit findings relating to the Subrecipient's performance, subject to the dispute resolution process in Section 12. Subrecipient shall assure that funds allocated hereunder are used only for the purposes permitted, and assumes responsibility for breach of conditions of the STF funding requirements hereunder by Subrecipient. Subrecipient shall, upon breach of conditions that require Ride Connection to reimburse funds to TriMet and or, ODOT or otherwise incur costs from funder withholding of funds, hold harmless and indemnify Ride Connection for an amount equal to the funds required to be repaid or withheld plus any additional costs or expenses incurred by Ride Connection.

In the event a creditor imposes any lien or claim for labor, fringe benefits, taxes, supplies, materials, equipment rental or other charges against the Services covered by this Agreement, thereby legally encumbering the Services, the amount of such obligation may be deducted by Ride Connection from any payment or payments, including retainage, made under this Agreement.

5. Discrimination Prohibited/Compliance with Laws

Subrecipient certifies that no person shall, on the grounds of race, age, religion, color, sex, national origin, physical or mental disability, marital or veteran status, sexual orientation, gender identity, or any other characteristic protected by law, be excluded from participation in, or be denied the benefits of, any activity for which Subrecipient receives STF funds. Subrecipient shall not discriminate against any employee or applicant for employment because of race, age, religion, color, sex, national origin, physical or mental disability, marital or veteran status, sexual orientation, gender identity, or any other characteristic protected by law.

Subrecipient shall comply with all applicable federal, state and local laws, rules and regulations applicable to the work hereunder, including without limitation, provisions required in public contracts under ORS Chapter 279, civil rights laws and all requirements established by the Americans with Disabilities Act of 1990 and FTA regulations at 49 CFR Parts 37 and 38, and all provisions of this Agreement.

6. Independent Contractor/Indemnification

A. The parties agree that Ride Connection shall have no liability of any nature in connection with the Subrecipient's use of the funds or Subrecipient's provision of transportation services. To the fullest extent permitted by law, Subrecipient agrees to fully indemnify, hold harmless and defend, Ride Connection, its directors, officers, employees and agents from and against all claims, suits, actions of whatsoever nature, damages or losses, and all expenses and costs incidental to the investigation and defense, resulting from or arising out of the activities of Subrecipient, its officers, directors, employees, agents, subcontractors and volunteers under this Agreement. The provisions set forth in this subparagraph shall survive termination or expiration of this Agreement.

B. Indemnified Conditions - Subject to the Oregon Tort Claims Act and the Oregon Constitution, Subrecipient agrees to fully indemnify, defend, and hold harmless the State of Oregon, TriMet, Ride Connection and their directors, officers, employees and agents (the "Indemnitees") from and against all claims, suits, actions of whatsoever nature, damages or losses, and all expenses and costs incidental to the investigation and defense, resulting from or arising out of the activities of Subrecipient, its officers, employees or agents under this Agreement, to the fullest extent permitted by law, including but not limited to the following:

- i. Bodily injury or death to any person;
- ii. Property damage to any personal or real property owned by anyone;
- iii. Failure to comply with any health and safety, corporate or administrative ordinances, regulations, orders, permits, licenses, and laws;
- iv. Infringement of any intellectual property or other third party rights;
- v. Discharge or causing the discharge of any hazardous or polluting substance; and
- vi. Liens, claims, demands, or suits of whatever nature brought by Subrecipient's laborers, subcontractors, material and equipment providers, or other creditors to enforce a right of any kind made upon or against the Services or the real property

where the Services are performed.

- C. Indemnity by Subcontractors - Subrecipient agrees to include in any third party contract under this Agreement a provision to the effect that the contractor shall fully indemnify, hold harmless and defend the State of Oregon, TriMet, Ride Connection, and their directors, officers, employees and agents from and against all claims, suits, actions of whatsoever nature, damages or losses, and all expenses and costs incidental to the investigations and defense, but not limited to the liabilities enumerated above, resulting from or arising out of the activities of such subcontractor, its officers, employees or agents under the contract between Subrecipient and such subcontractor procured pursuant to this Agreement.
- D. Indemnitor Consent - Subrecipient shall not defend any claim in the name of the State of Oregon, any Agency of the State of Oregon, TriMet, or Ride Connection, nor purport to act as legal representative of same, without the prior written consent of the Oregon Attorney General, TriMet, or Ride Connection.
- E. Limitation on Indemnification - Subrecipient's indemnification above shall not include any liability to the extent caused by or resulting from the concurrent negligence of any Indemnitors. Any legal limitations now or hereafter in effect affecting the validity or enforceability of the indemnity, defense and hold harmless obligations assumed by Subrecipient pursuant to this Agreement shall operate to amend the Subrecipient's obligations only to the minimum extent necessary for the indemnity, defense and hold harmless contractual provision to conform with the requirements of such limitations, and as so modified, the obligations shall continue in full force and effect.

7. Vehicle/ Operator Requirements

Subrecipient shall ensure that all drivers of equipment have a valid driver's license and have been approved to drive by Ride Connection. Drivers of equipment designed to carry 16 or more passengers, including the driver, shall have a valid Commercial Driver's License (CDL). Subrecipient shall otherwise ensure that operation of the vehicles is performed in accordance with all applicable laws and regulations.

Subrecipient shall perform criminal, Department of Motor Vehicles and employment background checks as part of the eligibility requirements for all drivers.

Subrecipient shall only let approved drivers transport customers or drive Ride Connection network vehicles.

8. Funding

- A. No more than monthly, Ride Connection shall reimburse Subrecipient for costs associated with activities outlined in Exhibit A. Reimbursement requests will only be paid when actual costs have been incurred and not beforehand.

Ride Connection shall pay Subrecipient for full, complete, and satisfactory performance of the Services, upon Ride Connection's receipt of payment from TriMet for Subrecipient's Services, at the price and/or rates mutually agreed by the parties under this Agreement for

the applicable project. No other costs, rates, or fees shall be payable to the Subrecipient. Except as set forth in this Agreement, Subrecipient shall bear sole responsibility for all additional expenses incurred in connection with its performance of the Services.

- B. The maximum funding to be disbursed to Subrecipient under this Agreement is **\$152,254**
- C. Subrecipient shall document eligible use of STF funds in accordance with this Agreement.
- D. All invoices shall be submitted electronically to Ride Connection Accounts Payable at accountspayable@rideconnection.org.
- E. Payment Terms - Subrecipient shall submit to Ride Connection monthly invoices and any other documentation requested by Ride Connection for payment at such times as will enable Ride Connection to apply for payment from TriMet in a timely manner. When required by Ride Connection, and as a condition precedent to any payment, and particularly final payment, Subrecipient shall provide, in a form satisfactory to Ride Connection, lien releases, claim waivers, and affidavits of payment from Subrecipient, and its lower-tier subcontractors and suppliers of any tier, for any portion of Subrecipient's Services.

9. Term

This Agreement shall be in effect from 7/1/2018 through 6/30/2019, unless the Agreement is terminated earlier as provided in this Agreement.

10. Communications

All communications between the parties regarding this Agreement shall be directed to the parties' respective Project Managers as indicated below:

Ride Connection:
Dean Orr
Ride Connection
9955 NE Glisan St.
Portland, OR 97220

Subrecipient:
Stefanie Reid
Clackamas County Consortium
2051 Kaen Rd
Oregon City, OR 97045-1819

If one party finds a need to designate a new Project Manager, they shall immediately notify the other party in writing, electronic mail, or other dated documentation.

11. Assignment/Subcontracts

Subrecipient shall not enter into subcontracts for performance of Services under this Agreement except as may be specifically authorized by this Agreement in the attached and incorporated Exhibit A.

Subrecipient may not assign, delegate or subcontract any of its rights or obligations under this Agreement to any other party without the prior written consent of Ride Connection. Any assignment, delegation or subcontract in violation of this paragraph shall be null and void, and shall constitute grounds for immediate termination by Ride Connection.

12. Dispute Resolution

Executive Negotiation - The Parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement, or any breach hereof or any Services performed hereunder, promptly by negotiation between executives who have authority to settle the controversy. Any party may give the other party written notice of any dispute not resolved during the normal course of business. Such notice shall include a statement of that party's position and documentation supporting that parties claim and the name and title of the executive who will be representing that party and any other person who will accompany the executive. The receiving party shall respond in kind within five (5) days of the date of notice. Within ten (10) days after delivery of the initial notice, the executives of both parties shall meet at a mutually acceptable time and place and use good faith efforts to resolve the dispute. If dispute is not then resolved, either party may give the other written notice that these executive negotiations are concluded. Negotiations pursuant to this Section shall be confidential and shall be treated as compromise and settlement negotiations for purposes of Law and rules of evidence. Time requirements herein may be modified upon mutual written consent of the parties.

Mediation - In the event that the parties are unable to settle the dispute through direct negotiations as set forth above, all remaining controversies or claims shall then be submitted to mediation within ten (10) days from written notice of concluded negotiations following the Mediation Rules published by the Arbitration Service of Portland, Inc. Unless the parties agree otherwise, mediation shall be held in Portland, Oregon. This Agreement to mediate and any other agreement or consent to mediate entered into in accordance with this Agreement shall be specifically enforceable under the prevailing law of any court having jurisdiction.

Arbitration - In the event that the parties are unable to settle the dispute through negotiation and mediation as set forth above, either party may seek final resolution through binding arbitration pursuant to the Commercial Arbitration Rules of the Arbitration Service of Portland, Inc. for one arbitrator. The arbitrator's decision shall be binding, final, and enforceable by any court with appropriate jurisdiction in accordance with the Rules of the Arbitration Serviced of Portland, Inc.

Costs and Award - The prevailing party in any arbitration shall be eligible for the award of all dispute resolution costs and expenses, through all tiers of dispute resolution, including meditation, if so awarded by the arbitrator or court of jurisdiction.

13. Claims, Notice

- A. **Notice Period** - Subrecipient shall provide written notice of any claim under this Agreement to Ride Connection within five (5) business days of the circumstances giving rise to the claim or within sufficient time to allow Ride Connection to give notice to funder (whichever is sooner).
- B. **Notice Content** - Any claim by Subrecipient must set forth in detail the entitlement and quantum basis for Subrecipient's claim with supporting data and/or the entitlement basis to Ride Connection.

- C. Requirement to Continue Services - Whether or not Subrecipient has a claim pending with Ride Connection, Subrecipient shall continue performing Services under this Agreement. Any suspension of Services by Subrecipient, without written consent by Ride Connection, may be considered by Ride Connection as a material breach of this Agreement. Ride Connection does not waive the requirement for timely written notice and/or timely written submission of the Statement of Claim unless Ride Connection's waiver is unequivocal, explicit, and in writing.

14. Confidential Information

Subrecipient agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Subrecipient uses in maintaining the confidentiality of its own confidential information, but no less stringent as reasonable care, and shall not, without the disclosing entity's prior written consent, 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 the provision of Services hereunder. Subrecipient shall advise Ride Connection immediately if Subrecipient learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Section, and Subrecipient shall, at its expense, cooperate with Ride Connection in seeking injunctive or other equitable relief against any such person.

15. Governing Law

This Agreement shall be governed by the laws of the State of Oregon, to the express exclusion of all other choice of law alternatives.

16. Surviving Provisions

Notwithstanding termination or expiration of this Agreement, the following provisions shall survive and continue to be in full force and effect: 1C (Audit); 6 (Indemnification); 14 (Confidential Information); 18 (Dispute Resolution); 16 Governing Law, 17(Surviving Provisions); Exhibit B 3B (Recordkeeping); and Exhibit F (Insurance).

17. Entire Agreement/Authority

This Agreement and the attached Exhibits A, B, C, D, E, and F constitute the entire Agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made shall be effective only in the specific instance and for the specific purpose given. The failure of Ride Connection to enforce any provision of this Agreement shall not constitute a waiver by Ride Connection of that or any other provision.

If any term of this Agreement is determined by a court to be illegal or conflict with any law, the remaining terms 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.

18. Agreement Documents

This Agreement consists of this document and the following documents, all of which are attached hereto and incorporated herein reference:

- Exhibit A: Scope of Work
- Exhibit B: Specific Agreement Provisions
- Exhibit C: Federal Terms and Conditions
- Exhibit D: Nondiscrimination Certificate
- Exhibit E: Reporting Requirements
- Exhibit F: Insurance Requirements

WISHING TO BE LEGALLY BOUND, the parties have caused this Agreement to be executed below by each party's duly authorized representative:

RIDE CONNECTION, INC.

Signature

Printed Name

Title

Date

CLACKAMAS COUNTY

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

Signing on Behalf of the Board:

By: _____
Rich Swift, Director
Health, Housing and Human Services

Dated: _____

Approved to Form:

By: _____
Clackamas County Council

Dated: _____

September 20, 2018

Board of County Commissioner
Clackamas County

Members of the Board:

Approval of Agreement #18574 and #18565 with
Ride Connection, Inc. to Provide Funding for Rides Provided
by Members of the Clackamas County Transportation Consortium

Purpose/Outcomes	Social Services-Transportation Reaching People and Senior Center based transportation services to assist older and disabled county residents in meeting their transportation needs to conduct their personal business, grocery shop, medical and/or other appointments.
Dollar Amount and Fiscal Impact	Agreement #18574 Amount \$157,799. This agreement is funded through the agreements with State of Oregon, Special Transportation Formula Fund (STF). Agreement #18565 Amount \$206,670. This agreement is funded through the agreements with TriMet General Fund
Funding Source	State of Oregon, ODOT-STF funds and TriMet General Funds. No County General Funds are involved
Duration	Effective July 1, 2018 and terminates on June 30, 2019
Previous Board Action	010517-A3 for STF Funding
Strategic Plan Alignment	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 needs of older adults in the community.
Contact Person	Brenda Durbin, Director, Social Services Division 503-655-8641
Contract No.	H3S# 8994, H3S# 8998

BACKGROUND:

The Social Services Division of the Health, Housing and Human Services request approval of Agreements #18574 and #18565 with Ride Connection, Inc. Agreement #18574 provides State of Oregon, Special Transportation Formula (STF) funding for rides that originate outside the TriMet service district while Agreement #18565 provided funding for rides that originate inside the TriMet service district. All rides are provided throughout the County by members of the Clackamas County Transportation Consortium (CCTC). The combination of these two agreements fund the core base-services of the CCTC programming as well as continued funding for FY2018-19 to reimburse members of the CCTC for transportation services they provide to Clackamas County seniors and persons with disabilities. These funds help residents to remain independent and engaged in their community as long as possible.

Any disabled adult or person over the age of 60 living in Clackamas has access to transportation services through either their local Adult/Senior Community Centers or the Social Services Transportation Reaching People (TRP) program. The Centers located in Canby, Estacada, Gladstone, Hoodland/Welches, Lake Oswego, Milwaukie, Molalla, Oregon City, and Sandy provide

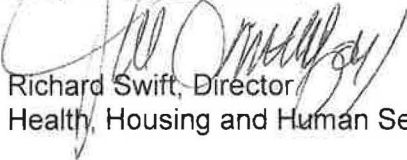
rides in lift equipped mini-buses and/or vans to residents in their service area. The transportation services provided by senior centers are primarily to the centers for participation in the nutrition programs and the various services and recreational programs offered at the centers. However, the Centers also provide group transportation for shopping, personal business, and medical appointments in their local area. The TRP program utilizes this funding to provide rides with volunteer drivers in their privately owned autos driven. TRP provides transportation throughout the county and to medical facilities located in the Portland-metro area. The majority of TRP rides are for medical transportation. TRP also provides rides for residents to conduct other personal business; including accessing food banks and grocery stores. In general, transportation is provided weekdays between 8:00 am and 5:00pm.

This agreement is late due to Ride Connection not being able to release agreements/modifications to its sub-contractors until their funding source released their agreement and approved the Subrecipient agreements issued by Ride Connection. This resulted in the delay of Ride Connection sending out its agreements for FY18-19. County Council reviewed and approved this agreement on 9/12/18. No County General Funds are involved. This agreement is the first year of the two-year STF grant awarded during the January 2017 application cycle.

RECOMMENDATION:

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

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Richard Swift", is written over the printed name and title.

Richard Swift, Director
Health, Housing and Human Services

**SERVICES AGREEMENT #18574
BETWEEN
RIDE CONNECTION INC. and Clackamas County Consortium**

PARTIES:

1. Ride Connection, Inc. ("Ride Connection" or "Recipient"), and
2. Clackamas County Consortium ("Subrecipient")

RECITALS:

1. Ride Connection and Subrecipient enter into this Agreement for the sole purpose of disbursing the approved STF and other funds to Subrecipient for Subrecipient's accomplishment of the Project(s). **Maximum amount of Grant funds shall not exceed \$157,799. These funds shall be used solely for the Project(s) in Exhibit A, and not be used for any other purpose.**
2. Oregon Department of Transportation ("ODOT") has made funds available to Tri-County Metropolitan Transportation District of Oregon ("TriMet") pursuant to the Federal Transportation Administration Program for Enhanced Mobility of Seniors and Individuals With Disabilities, 49 U.S.C. §5310 ("5310 Funds"). Ride Connection is a pass-through recipient of these funds through Grant Agreement/Contract No. JP180303ZC (the "Prime Contract") from TriMet.
3. Oregon Department of Transportation ("ODOT") has made Special Transportation Funds (STF) funds available to Tri-County Metropolitan Transportation District of Oregon ("TriMet"). Ride Connection is a pass-through recipient of these funds through Grant from TriMet.
4. Tri-County Metropolitan Transportation District of Oregon ("TriMet") has made general funds available to Ride Connection, to pass-through to Clackamas County Consortium which provides transportation services inside the TriMet services District.
5. Subrecipient and Ride Connection agree that time is of the essence for all activities comprising the Services under this Agreement.

AGREEMENTS:

1. General

- A. Subrecipient agrees to comply with and use the STF funds in accordance with the terms of this Agreement including the terms of ORS 391.80 through 391.830 and the provisions of OAR Chapter 732 as may be amended, all of which are incorporated into and made part of

this Agreement. Specific contractual requirements applicable to Subrecipient under this Agreement are set forth in Exhibits A, B, C, D, E, and F which are incorporated into and made part of this Agreement. Any conflict among the terms of this Agreement shall be resolved in accordance with the following order of precedence: this Agreement form, Exhibit A, Exhibit B, Exhibit C, and Exhibit D. This Agreement is subject to any agreements between TriMet, and ODOT, and Ride Connection regarding disbursement of STF and other funds, and shall be amended to incorporate those changes.

Subrecipient agrees to comply with all Subrecipient monitoring policies, procedures, and other requirements that may be established by Ride Connection, including but not limited to Title VI compliance.

Subrecipient shall not be relieved of any responsibility of performance of Subrecipient's duties under this Agreement, regardless of any subcontract entered into. Subrecipient shall require any subcontractor performing services under this Agreement to enter into a written agreement with Subrecipient before the commencement of services, which shall require the subcontractor to comply with ORS 391.800 through 391.830, OAR Chapter 732, as may be amended, and the terms of this Agreement. Subrecipient shall specifically include in all subcontracts a requirement that the subcontractor shall be bound by the following paragraphs of this agreement as if the subcontractor were the Subrecipient: Paragraphs 2 through 5.

- B. **Scope of Services and Changes** - Subrecipient agrees that it is under a continuing obligation to comply with the foregoing requirements, as they be modified or amended from time to time. Subrecipient further agrees to execute the funded activities described in Exhibit A, in accordance with the terms of those requirements, as they may be amended during the term of this Agreement. This Agreement is subject to any amendments required as a result of agreement between TriMet, ODOT, and Ride Connection or pass-through obligations affecting Subrecipient's scope of Services, and is hereby amended to incorporate those changes. In the event any change to the Services as requested by Ride Connection results in a material increase or decrease in the Services, then an equitable adjustment in the total compensation owed to Subrecipient by Ride Connection shall be determined by Ride Connection and subsequent payments adjusted accordingly.
- C. **Audit Right** - Subrecipient agrees that Ride Connection rights of audit and review under Paragraph 2 of this Agreement specifically include Subrecipient's financial records, management and program systems, and any associated records. Subrecipient shall comply with any monitoring and audit requirements established by Ride Connection pertaining to this Agreement.

In the event that any audit or review of Subrecipient's records reveals a variance of Five Percent (5%) or more in cost overruns or charges in excess of any agreed upon price, then Ride Connection's costs of audit or review shall be reimbursed immediately by Subrecipient.

- D. **Subcontracts** - Subrecipient shall not enter into subcontracts for performance of Services under this Agreement except as may be specifically authorized by this Agreement in the attached and incorporated Exhibit A. Subrecipient shall not be relieved of any

responsibility for performance of Subrecipient's duties under this Agreement, regardless of any subcontract entered into. Subrecipient agrees that any subcontractor performing services under this Agreement shall comply with the requirements of this Agreement including FTA third-party agreement contract provisions and requirements, as may be amended, and shall enter into a written agreement with each subcontractor requiring the incorporation of those requirements as applicable to each tier. Any delay or defect in the performance of any part of Subrecipient's Services shall not relieve Subrecipient of its primary obligation under this Agreement to ensure timely and satisfactory performance of all the Services. Any subcontractor delay or defect in performance under this Agreement shall be subject to the indemnification provisions of Section 7.

- (1) Subrecipient acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies" 49 CFR Part 31, apply to its actions pertaining to the Services under this Agreement. Upon execution of this Agreement, Subrecipient certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make or cause to be made pertaining to this Agreement. In addition to other penalties that may be applicable, Subrecipient acknowledges that if it makes, or causes to be made a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on Subrecipient to the extent the Federal Government deems appropriate.
 - (2) Subrecipient also acknowledges that if it makes, or causes to be made a false, fictitious or fraudulent claim, statement, submission, or certification to the Federal Government under an Agreement connected with a project that is financed in whole or part with Federal assistance awarded by FTA under 49 U.S.C. Chapter 53 or any other Federal law, the Government reserves the rights to impose penalties of 18 U.S.C. 1001 and 49 U.S.C 5323(1) on Subrecipient, to the extent the Federal Government deems appropriate.
 - (3) Subrecipient agrees to include the above two clauses in each subcontract it awards under this Agreement financed in whole or in part with FTA funds. It is further agreed that the clauses shall not be modified except to identify the subcontractor who will be subject to the provisions.
- E. **Drug-Free Covered Agreement** - This Agreement is a covered transaction for purposes of 49 CFR Part 29. As such, Subrecipient is required to verify that none of Subrecipient, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945. By signing this Agreement, Subrecipient makes a material representation of fact relied upon by Ride Connection that Subrecipient has complied with 49 CFR Part 29. If it is later determined that Subrecipient knowingly rendered an erroneous representation of compliance with 49 CFR Part 29, in addition to and without limitation of the remedies available to Ride Connection, TriMet and the Federal Government may pursue any available remedies, including but not limited to suspension and/or debarment. In addition, Subrecipient is required to comply with 49 CFR 29, Subpart C throughout the term of this Agreement, and

must include the requirement to comply with 49 CFR Part 29, Subpart C in any lower tier covered transaction it enters into.

2. Audit Requirements/Financial Management Procedure

- A. STF funds disbursed by this Agreement shall be specifically addressed in Subrecipient's annual audits, and the terms of Exhibit B shall apply. Ride Connection may request additional information including, but not limited to, audits of specific projects or services. Subrecipient will adhere to financial management procedures in accordance with Oregon and other applicable laws, and specifically as provided by ORS 391.800 through 391.830 and OAR Chapter 732 in addition to the requirements set forth in Exhibit B.

Subrecipient shall comply with applicable federal, state, and local laws as well as generally accepted accounting principles (GAAP) for accounting, billing, and reporting requirements with STF funds. **Subrecipient shall document the expense of all funds disbursed by Ride Connection under this Agreement.**

- B. Annual Self-Audit - Subrecipient shall follow the requirements stated in the Single Audit Act, 31 U.S.C. 7501 et seq. If Subrecipient expends Federal funds in excess of \$750,000 from all sources in its fiscal year, Subrecipient is subject to audit conducted in accordance with OMB Circular 2 CFR 200, Audits of States, Local governments, Non-profit Institutions. Subrecipient shall, at Subrecipient's own expense, submit to Ride Connection, 9955 NE Glisan St, Portland, OR 97220, an annual audit covering the funds expended under this Agreement and shall submit the annual audit of any subcontractor of Subrecipient responsible for the financial management of funds received under this Agreement.
- C. Audit Passthrough to Subcontractors - Subrecipient further agrees to include in any third party contract under this Agreement a provision to the effect that the contractor must retain and grant Ride Connection, TriMet, ODOT, the U.S. Department of Transportation, and the Comptroller General of the United States, or any of their authorized representatives access to all books, documents, papers and records directly pertinent to the contract, for the purpose of making audit, examination, excerpts and transcriptions, until the expiration of six (6) years (three years for federal retention requirements and an additional three years for state retention requirements) after final payment under the contract or expiration of the contract if expiration is later.
- (1) The periods of access and examination described in subparagraphs A and B of this Paragraph for records that relate to (1) disputes between Ride Connection and Subrecipient, (2) litigation or settlement of claims arising out of the performance of this contract, or (3) costs and expenses of this Agreement as to which exception has been taken by the Comptroller General or any of his or her duly authorized representatives, shall continue until all disputes, claims, litigation, appeals and exceptions have been resolved. Subrecipient agrees to include in any third party contract under this Agreement a provision to this effect.

- D. The foregoing provisions are in addition to and not in lieu of any other applicable federal or state laws, regulations, rules, circulars or directives. Subrecipient agrees to include in any third party contract under this Agreement a provision to this effect.

3. Reporting Requirements

In order to be reimbursed, Subrecipient shall submit monthly reports to Ride Connection no later than 20 days after the close of each month. Monthly reports should be remitted via Ride Connection's established process that meets the requirements of Exhibits A, B, and E.

Reports must be in a format acceptable to Ride Connection and include:

- A statement of revenues and expenses for each month, including documentation of local match contributions and expenses.
- A description project deliverables, tasks, and schedule completed for each month, including a description of how stated goals are being met.

Reports shall include complete information required by FTA Circular 5010.1C, Chapter III, Section (3) Reporting Requirements, particularly the status of grant activity line items, budget and schedule changes, milestone revisions or cost variances, outstanding claims, change orders and other information that the circular may require. Ride Connection may require additional reporting information from the Subrecipient.

Ride Connection, TriMet, and the State reserve the right to request additional information as may be necessary to comply with state reporting requirements.

4. Withholding of Funds

In addition to any other provisions of this Agreement including but not limited to Exhibits A, B, C, D, E, and F, Ride Connection may withhold payment of funds or offset future payments against funds already paid to Subrecipient if the funds are not being used in accordance with this Agreement, all required reporting has not been submitted, or there are any unresolved audit findings relating to the Subrecipient's performance, subject to the dispute resolution process in Section 12. Subrecipient shall assure that funds allocated hereunder are used only for the purposes permitted, and assumes responsibility for breach of conditions of the STF funding requirements hereunder by Subrecipient. Subrecipient shall, upon breach of conditions that require Ride Connection to reimburse funds to TriMet and or, ODOT or otherwise incur costs from funder withholding of funds, hold harmless and indemnify Ride Connection for an amount equal to the funds required to be repaid or withheld plus any additional costs or expenses incurred by Ride Connection.

In the event a creditor imposes any lien or claim for labor, fringe benefits, taxes, supplies, materials, equipment rental or other charges against the Services covered by this Agreement, thereby legally encumbering the Services, the amount of such obligation may be deducted by Ride Connection from any payment or payments, including retainage, made under this Agreement.

5. Discrimination Prohibited/Compliance with Laws

Subrecipient certifies that no person shall, on the grounds of race, age, religion, color, sex, national origin, physical or mental disability, marital or veteran status, sexual orientation, gender identity, or any other characteristic protected by law, be excluded from participation in, or be denied the benefits of, any activity for which Subrecipient receives STF funds. Subrecipient shall not discriminate against any employee or applicant for employment because of race, age, religion, color, sex, national origin, physical or mental disability, marital or veteran status, sexual orientation, gender identity, or any other characteristic protected by law.

Subrecipient shall comply with all applicable federal, state and local laws, rules and regulations applicable to the work hereunder, including without limitation, provisions required in public contracts under ORS Chapter 279, civil rights laws and all requirements established by the Americans with Disabilities Act of 1990 and FTA regulations at 49 CFR Parts 37 and 38, and all provisions of this Agreement.

6. Independent Contractor/Indemnification

A. The parties agree that Ride Connection shall have no liability of any nature in connection with the Subrecipient's use of the funds or Subrecipient's provision of transportation services. To the fullest extent permitted by law, Subrecipient agrees to fully indemnify, hold harmless and defend, Ride Connection, its directors, officers, employees and agents from and against all claims, suits, actions of whatsoever nature, damages or losses, and all expenses and costs incidental to the investigation and defense, resulting from or arising out of the activities of Subrecipient, its officers, directors, employees, agents, subcontractors and volunteers under this Agreement. The provisions set forth in this subparagraph shall survive termination or expiration of this Agreement.

B. Indemnified Conditions - Subject to the Oregon Tort Claims Act and the Oregon Constitution, Subrecipient agrees to fully indemnify, defend, and hold harmless the State of Oregon, TriMet, Ride Connection and their directors, officers, employees and agents (the "Indemnitees") from and against all claims, suits, actions of whatsoever nature, damages or losses, and all expenses and costs incidental to the investigation and defense, resulting from or arising out of the activities of Subrecipient, its officers, employees or agents under this Agreement, to the fullest extent permitted by law, including but not limited to the following:

- i. Bodily injury or death to any person;
- ii. Property damage to any personal or real property owned by anyone;
- iii. Failure to comply with any health and safety, corporate or administrative ordinances, regulations, orders, permits, licenses, and laws;
- iv. Infringement of any intellectual property or other third party rights;
- v. Discharge or causing the discharge of any hazardous or polluting substance; and
- vi. Liens, claims, demands, or suits of whatever nature brought by Subrecipient's laborers, subcontractors, material and equipment providers, or other creditors to enforce a right of any kind made upon or against the Services or the real property

where the Services are performed.

- C. Indemnity by Subcontractors - Subrecipient agrees to include in any third party contract under this Agreement a provision to the effect that the contractor shall fully indemnify, hold harmless and defend the State of Oregon, TriMet, Ride Connection, and their directors, officers, employees and agents from and against all claims, suits, actions of whatsoever nature, damages or losses, and all expenses and costs incidental to the investigations and defense, but not limited to the liabilities enumerated above, resulting from or arising out of the activities of such subcontractor, its officers, employees or agents under the contract between Subrecipient and such subcontractor procured pursuant to this Agreement.
- D. Indemnatee Consent - Subrecipient shall not defend any claim in the name of the State of Oregon, any Agency of the State of Oregon, TriMet, or Ride Connection, not purport to act as legal representative of same, without the prior written consent of the Oregon Attorney General, TriMet, or Ride Connection.
- E. Limitation on Indemnification - Subrecipient's indemnification above shall not include any liability to the extent caused by or resulting from the concurrent negligence of any Indemnitees. Any legal limitations now or hereafter in effect affecting the validity or enforceability of the indemnity, defense and hold harmless obligations assumed by Subrecipient pursuant to this Agreement shall operate to amend the Subrecipient's obligations only to the minimum extent necessary for the indemnity, defense and hold harmless contractual provision to conform with the requirements of such limitations, and as so modified, the obligations shall continue in full force and effect.

7. Vehicle/ Operator Requirements

Subrecipient shall ensure that all drivers of equipment have a valid driver's license and have been approved to drive by Ride Connection. Drivers of equipment designed to carry 16 or more passengers, including the driver, shall have a valid Commercial Driver's License (CDL). Subrecipient shall otherwise ensure that operation of the vehicles is performed in accordance with all applicable laws and regulations.

Subrecipient shall perform criminal, Department of Motor Vehicles and employment background checks as part of the eligibility requirements for all drivers.

Subrecipient shall only let approved drivers transport customers or drive Ride Connection network vehicles.

8. Funding

- A. No more than monthly, Ride Connection shall reimburse Subrecipient for costs associated with activities outlined in Exhibit A. Reimbursement requests will only be paid when actual costs have been incurred and not beforehand.

Ride Connection shall pay Subrecipient for full, complete, and satisfactory performance of the Services, upon Ride Connection's receipt of payment from TriMet for Subrecipient's Services, at the price and/or rates mutually agreed by the parties under this Agreement for

the applicable project. No other costs, rates, or fees shall be payable to the Subrecipient. Except as set forth in this Agreement, Subrecipient shall bear sole responsibility for all additional expenses incurred in connection with its performance of the Services.

- B. The maximum funding to be disbursed to Subrecipient under this Agreement is **\$157,799**
- C. Subrecipient shall document eligible use of STF funds in accordance with this Agreement.
- D. All invoices shall be submitted electronically to Ride Connection Accounts Payable at accountspayable@rideconnection.org.
- E. Payment Terms - Subrecipient shall submit to Ride Connection monthly invoices and any other documentation requested by Ride Connection for payment at such times as will enable Ride Connection to apply for payment from TriMet in a timely manner. When required by Ride Connection, and as a condition precedent to any payment, and particularly final payment, Subrecipient shall provide, in a form satisfactory to Ride Connection, lien releases, claim waivers, and affidavits of payment from Subrecipient, and its lower-tier subcontractors and suppliers of any tier, for any portion of Subrecipient's Services.

9. Term

This Agreement shall be in effect from 7/1/2018 through 6/30/2019, unless the Agreement is terminated earlier as provided in this Agreement.

10. Communications

All communications between the parties regarding this Agreement shall be directed to the parties' respective Project Managers as indicated below:

Ride Connection:
Dean Orr
Ride Connection
9955 NE Glisan St.
Portland, OR 97220

Subrecipient:
Stefanie Reid
Clackamas County Consortium
2051 Kaen Rd
Oregon City, OR 97045-1819

If one party finds a need to designate a new Project Manager, they shall immediately notify the other party in writing, electronic mail, or other dated documentation.

11. Assignment/Subcontracts

Subrecipient shall not enter into subcontracts for performance of Services under this Agreement except as may be specifically authorized by this Agreement in the attached and incorporated Exhibit A.

Subrecipient may not assign, delegate or subcontract any of its rights or obligations under this Agreement to any other party without the prior written consent of Ride Connection. Any assignment, delegation or subcontract in violation of this paragraph shall be null and void, and shall constitute grounds for immediate termination by Ride Connection.

12. Dispute Resolution

Executive Negotiation - The Parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement, or any breach hereof or any Services performed hereunder, promptly by negotiation between executives who have authority to settle the controversy. Any party may give the other party written notice of any dispute not resolved during the normal course of business. Such notice shall include a statement of that party's position and documentation supporting that parties claim and the name and title of the executive who will be representing that party and any other person who will accompany the executive. The receiving party shall respond in kind within five (5) days of the date of notice. Within ten (10) days after delivery of the initial notice, the executives of both parties shall meet at a mutually acceptable time and place and use good faith efforts to resolve the dispute. If dispute is not then resolved, either party may give the other written notice that these executive negotiations are concluded. Negotiations pursuant to this Section shall be confidential and shall be treated as compromise and settlement negotiations for purposes of Law and rules of evidence. Time requirements herein may be modified upon mutual written consent of the parties.

Mediation - In the event that the parties are unable to settle the dispute through direct negotiations as set forth above, all remaining controversies or claims shall then be submitted to mediation within ten (10) days from written notice of concluded negotiations following the Mediation Rules published by the Arbitration Service of Portland, Inc. Unless the parties agree otherwise, mediation shall be held in Portland, Oregon. This Agreement to mediate and any other agreement or consent to mediate entered into in accordance with this Agreement shall be specifically enforceable under the prevailing law of any court having jurisdiction.

Arbitration - In the event that the parties are unable to settle the dispute through negotiation and mediation as set forth above, either party may seek final resolution through binding arbitration pursuant to the Commercial Arbitration Rules of the Arbitration Service of Portland, Inc. for one arbitrator. The arbitrator's decision shall be binding, final, and enforceable by any court with appropriate jurisdiction in accordance with the Rules of the Arbitration Serviced of Portland, Inc.

Costs and Award - The prevailing party in any arbitration shall be eligible for the award of all dispute resolution costs and expenses, through all tiers of dispute resolution, including meditation, if so awarded by the arbitrator or court of jurisdiction.

13. Claims, Notice

- A. **Notice Period** - Subrecipient shall provide written notice of any claim under this Agreement to Ride Connection within five (5) business days of the circumstances giving rise to the claim or within sufficient time to allow Ride Connection to give notice to funder (whichever is sooner).
- B. **Notice Content** - Any claim by Subrecipient must set forth in detail the entitlement and quantum basis for Subrecipient's claim with supporting data and/or the entitlement basis to Ride Connection.

- C. Requirement to Continue Services - Whether or not Subrecipient has a claim pending with Ride Connection, Subrecipient shall continue performing Services under this Agreement. Any suspension of Services by Subrecipient, without written consent by Ride Connection, may be considered by Ride Connection as a material breach of this Agreement. Ride Connection does not waive the requirement for timely written notice and/or timely written submission of the Statement of Claim unless Ride Connection's waiver is unequivocal, explicit, and in writing.

14. Confidential Information

Subrecipient agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Subrecipient uses in maintaining the confidentiality of its own confidential information, but no less stringent as reasonable care, and shall not, without the disclosing entity's prior written consent, 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 the provision of Services hereunder. Subrecipient shall advise Ride Connection immediately if Subrecipient learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Section, and Subrecipient shall, at its expense, cooperate with Ride Connection in seeking injunctive or other equitable relief against any such person.

15. Governing Law

This Agreement shall be governed by the laws of the State of Oregon, to the express exclusion of all other choice of law alternatives.

16. Surviving Provisions

Notwithstanding termination or expiration of this Agreement, the following provisions shall survive and continue to be in full force and effect: 1C (Audit); 6 (Indemnification); 14 (Confidential Information); 18 (Dispute Resolution); 16 Governing Law, 17(Surviving Provisions); Exhibit B 3B (Recordkeeping); and Exhibit F (Insurance).

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This Agreement and the attached Exhibits A, B, C, D, E, and F constitute the entire Agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made shall be effective only in the specific instance and for the specific purpose given. The failure of Ride Connection to enforce any provision of this Agreement shall not constitute a waiver by Ride Connection of that or any other provision.

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- Exhibit E: Reporting Requirements
- Exhibit F: Insurance Requirements

WISHING TO BE LEGALLY BOUND, the parties have caused this Agreement to be executed below by each party's duly authorized representative:

RIDE CONNECTION, INC.

Signature

Printed Name

Title

Date

CLACKAMAS COUNTY

Commissioner: Jim Bernard, Chair

Commissioner: Sonya Fischer

Commissioner: Ken Humbertson

Commissioner: Paul Savas

Commissioner: Martha Schrader

Signing on Behalf of the Board:

By: _____

Rich Swift, Director
Health, Housing and Human Services

Dated: _____

Approved to Form:

By: _____

Clackamas County Council

Dated: _____

**SERVICES AGREEMENT #18565
BETWEEN
RIDE CONNECTION INC. and Clackamas County Consortium**

PARTIES:

1. Ride Connection, Inc. ("Ride Connection" or "Recipient"), and
2. Clackamas County Consortium ("Subrecipient")

RECITALS:

1. Ride Connection and Subrecipient enter into this Agreement for the sole purpose of disbursing the approved TriMet general funds to Subrecipient for Subrecipient's accomplishment of the Project(s). **Maximum amount of Grant funds shall not exceed \$206,670. These funds shall be used solely for the Project(s) in Exhibit A, and not be used for any other purpose.**
2. Tri-County Metropolitan Transportation District of Oregon ("TriMet") has made general funds available to Ride Connection, to pass-through to Clackamas County Consortium which provides transportation services inside the TriMet services District.
3. Subrecipient and Ride Connection agree that time is of the essence for all activities comprising the Services under this Agreement.

AGREEMENTS:

1. General

- A. Subrecipient agrees to comply with and use the funds in accordance with the terms of this Agreement. Specific contractual requirements applicable to Subrecipient under this Agreement are set forth in Exhibits A, B, C, D, E, and F which are incorporated into and made part of this Agreement. Any conflict among the terms of this Agreement shall be resolved in accordance with the following order of precedence: this Agreement form, Exhibit A, Exhibit B, Exhibit C, and Exhibit D. This Agreement is subject to any agreements between TriMet, and Ride Connection regarding disbursement of TriMet general funds, and shall be amended to incorporate those changes.

Subrecipient agrees to comply with all Subrecipient monitoring policies, procedures, and other requirements that may be established by Ride Connection, including but not limited to Title VI compliance.

Subrecipient shall not be relieved of any responsibility of performance of Subrecipient's duties under this Agreement, regardless of any subcontract entered into. Subrecipient shall require any subcontractor performing services under this Agreement to enter into a written

agreement with Subrecipient before the commencement of services. Subrecipient shall specifically include in all subcontracts a requirement that the subcontractor shall be bound by the following paragraphs of this agreement as if the subcontractor were the Subrecipient: Paragraphs 2 through 5.

- B. Scope of Services and Changes** - Subrecipient agrees that it is under a continuing obligation to comply with the foregoing requirements, as they be modified or amended from time to time. Subrecipient further agrees to execute the funded activities described in Exhibit A, in accordance with the terms of those requirements, as they may be amended during the term of this Agreement. This Agreement is subject to any amendments required as a result of agreement between TriMet and Ride Connection or pass-through obligations affecting Subrecipient's scope of Services, and is hereby amended to incorporate those changes. In the event any change to the Services as requested by Ride Connection results in a material increase or decrease in the Services, then an equitable adjustment in the total compensation owed to Subrecipient by Ride Connection shall be determined by Ride Connection and subsequent payments adjusted accordingly.

- C. Audit Right** - Subrecipient agrees that Ride Connection rights of audit and review under Paragraph 2 of this Agreement specifically include Subrecipient's financial records, management and program systems, and any associated records. Subrecipient shall comply with any monitoring and audit requirements established by Ride Connection pertaining to this Agreement.

In the event that any audit or review of Subrecipient's records reveals a variance of Five Percent (5%) or more in cost overruns or charges in excess of any agreed upon price, then Ride Connection's costs of audit or review shall be reimbursed immediately by Subrecipient.

- D. Subcontracts** - Subrecipient shall not enter into subcontracts for performance of Services under this Agreement except as may be specifically authorized by this Agreement in the attached and incorporated Exhibit A. Subrecipient shall not be relieved of any responsibility for performance of Subrecipient's duties under this Agreement, regardless of any subcontract entered into. Subrecipient agrees that any subcontractor performing services under this Agreement shall comply with the requirements of this Agreement including FTA third-party agreement contract provisions and requirements, as may be amended, and shall enter into a written agreement with each subcontractor requiring the incorporation of those requirements as applicable to each tier. Any delay or defect in the performance of any part of Subrecipient's Services shall not relieve Subrecipient of its primary obligation under this Agreement to ensure timely and satisfactory performance of all the Services. Any subcontractor delay or defect in performance under this Agreement shall be subject to the indemnification provisions of Section 7.

- (1) Subrecipient acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies" 49 CFR Part 31, apply to its actions pertaining to the Services under this Agreement. Upon execution of this Agreement, Subrecipient certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make or cause to be made pertaining to this Agreement. In addition to other penalties

that may be applicable, Subrecipient acknowledges that if it makes, or causes to be made a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on Subrecipient to the extent the Federal Government deems appropriate.

- (2) Subrecipient also acknowledges that if it makes, or causes to be made a false, fictitious or fraudulent claim, statement, submission, or certification to the Federal Government under an Agreement connected with a project that is financed in whole or part with Federal assistance awarded by FTA under 49 U.S.C. Chapter 53 or any other Federal law, the Government reserves the rights to impose penalties of 18 U.S.C. 1001 and 49 U.S.C 5323(1) on Subrecipient, to the extent the Federal Government deems appropriate.
- (3) Subrecipient agrees to include the above two clauses in each subcontract it awards under this Agreement financed in whole or in part with FTA funds. It is further agreed that the clauses shall not be modified except to identify the subcontractor who will be subject to the provisions.

E. Drug-Free Covered Agreement - This Agreement is a covered transaction for purposes of 49 CFR Part 29. As such, Subrecipient is required to verify that none of Subrecipient, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945. By signing this Agreement, Subrecipient makes a material representation of fact relied upon by Ride Connection that Subrecipient has complied with 49 CFR Part 29. If it is later determined that Subrecipient knowingly rendered an erroneous representation of compliance with 49 CFR Part 29, in addition to and without limitation of the remedies available to Ride Connection, TriMet and the Federal Government may pursue any available remedies, including but not limited to suspension and/or debarment. In addition, Subrecipient is required to comply with 49 CFR 29, Subpart C throughout the term of this Agreement, and must include the requirement to comply with 49 CFR Part 29, Subpart C in any lower tier covered transaction it enters into.

2. Audit Requirements/Financial Management Procedure

- A. STF funds disbursed by this Agreement shall be specifically addressed in Subrecipient's annual audits, and the terms of Exhibit B shall apply. Ride Connection may request additional information including, but not limited to, audits of specific projects or services. Subrecipient will adhere to financial management procedures in accordance with Oregon and other applicable laws, and specifically as provided by ORS 391.800 through 391.830 and OAR Chapter 732 in addition to the requirements set forth in Exhibit B.

Subrecipient shall comply with applicable federal, state, and local laws as well as generally accepted accounting principles (GAAP) for accounting, billing, and reporting requirements with STF funds. **Subrecipient shall document the expense of all funds disbursed by Ride Connection under this Agreement.**

- B. Annual Self-Audit - Subrecipient shall follow the requirements stated in the Single Audit Act, 31 U.S.C. 7501 et seq. If Subrecipient expends Federal funds in excess of \$750,000 from all sources in its fiscal year, Subrecipient is subject to audit conducted in accordance with OMB Circular 2 CFR 200, Audits of States, Local governments, Non-profit Institutions. Subrecipient shall, at Subrecipient's own expense, submit to Ride Connection, 9955 NE Glisan St, Portland, OR 97220, an annual audit covering the funds expended under this Agreement and shall submit the annual audit of any subcontractor of Subrecipient responsible for the financial management of funds received under this Agreement.
- C. Audit Passthrough to Subcontractors - Subrecipient further agrees to include in any third party contract under this Agreement a provision to the effect that the contractor must retain and grant Ride Connection, TriMet, or any of their authorized representatives access to all books, documents, papers and records directly pertinent to the contract, for the purpose of making audit, examination, excerpts and transcriptions, until the expiration of six (6) years (three years for federal retention requirements and an additional three years for state retention requirements) after final payment under the contract or expiration of the contract if expiration is later.
- (1) The periods of access and examination described in subparagraphs A and B of this Paragraph for records that relate to (1) disputes between Ride Connection and Subrecipient, (2) litigation or settlement of claims arising out of the performance of this contract, or (3) costs and expenses of this Agreement as to which exception has been taken by the Comptroller General or any of his or her duly authorized representatives, shall continue until all disputes, claims, litigation, appeals and exceptions have been resolved. Subrecipient agrees to include in any third party contract under this Agreement a provision to this effect.
- D. The foregoing provisions are in addition to and not in lieu of any other applicable federal or state laws, regulations, rules, circulars or directives. Subrecipient agrees to include in any third party contract under this Agreement a provision to this effect.

3. Reporting Requirements

In order to be reimbursed, Subrecipient shall submit monthly reports to Ride Connection no later than 20 days after the close of each month. Monthly reports should be remitted via Ride Connection's established process that meets the requirements of Exhibits A, B, and E.

Reports must be in a format acceptable to Ride Connection and include:

- A statement of revenues and expenses for each month, including documentation of local match contributions and expenses.
- A description project deliverables, tasks, and schedule completed for each month, including a description of how stated goals are being met.

Reports shall include complete information required by FTA Circular 5010.1C, Chapter III, Section (3) Reporting Requirements, particularly the status of grant activity line items, budget and schedule changes, milestone revisions or cost variances, outstanding claims, change orders and other information that the circular may require. Ride Connection may require additional

reporting information from the Subrecipient.

Ride Connection and TriMet reserve the right to request additional information as may be necessary to comply with state reporting requirements.

4. Withholding of Funds

In addition to any other provisions of this Agreement including but not limited to Exhibits A, B, C, D, E, and F, Ride Connection may withhold payment of funds or offset future payments against funds already paid to Subrecipient if the funds are not being used in accordance with this Agreement, all required reporting has not been submitted, or there are any unresolved audit findings relating to the Subrecipient's performance, subject to the dispute resolution process in Section 12. Subrecipient shall assure that funds allocated hereunder are used only for the purposes permitted. Subrecipient shall, upon breach of conditions that require Ride Connection to reimburse funds to TriMet or, ODOT or otherwise incur costs from funder withholding of funds, hold harmless and indemnify Ride Connection for an amount equal to the funds required to be repaid or withheld plus any additional costs or expenses incurred by Ride Connection.

In the event a creditor imposes any lien or claim for labor, fringe benefits, taxes, supplies, materials, equipment rental or other charges against the Services covered by this Agreement, thereby legally encumbering the Services, the amount of such obligation may be deducted by Ride Connection from any payment or payments, including retainage, made under this Agreement.

5. Discrimination Prohibited/Compliance with Laws

Subrecipient certifies that no person shall, on the grounds of race, age, religion, color, sex, national origin, physical or mental disability, marital or veteran status, sexual orientation, gender identity, or any other characteristic protected by law, be excluded from participation in, or be denied the benefits of, any activity for which Subrecipient receives STF funds. Subrecipient shall not discriminate against any employee or applicant for employment because of race, age, religion, color, sex, national origin, physical or mental disability, marital or veteran status, sexual orientation, gender identity, or any other characteristic protected by law.

Subrecipient shall comply with all applicable federal, state and local laws, rules and regulations applicable to the work hereunder, including without limitation, provisions required in public contracts under ORS Chapter 279, civil rights laws and all requirements established by the Americans with Disabilities Act of 1990 and FTA regulations at 49 CFR Parts 37 and 38, and all provisions of this Agreement.

6. Independent Contractor/Indemnification

- A. The parties agree that Ride Connection shall have no liability of any nature in connection with the Subrecipient's use of the funds or Subrecipient's provision of transportation services. To the fullest extent permitted by law, Subrecipient agrees to fully indemnify, hold harmless and defend, Ride Connection, its directors, officers, employees and agents from and against all claims, suits, actions of whatsoever nature, damages or losses, and all expenses and costs incidental to the investigation and defense, resulting from or arising out

of the activities of Subrecipient, its officers, directors, employees, agents, subcontractors and volunteers under this Agreement. The provisions set forth in this subparagraph shall survive termination or expiration of this Agreement.

- B. Indemnified Conditions - Subject to the Oregon Tort Claims Act and the Oregon Constitution, Subrecipient agrees to fully indemnify, defend, and hold harmless TriMet, Ride Connection and their directors, officers, employees and agents (the "Indemnitees") from and against all claims, suits, actions of whatsoever nature, damages or losses, and all expenses and costs incidental to the investigation and defense, resulting from or arising out of the activities of Subrecipient, its officers, employees or agents under this Agreement, to the fullest extent permitted by law, including but not limited to the following:
- i. Bodily injury or death to any person;
 - ii. Property damage to any personal or real property owned by anyone;
 - iii. Failure to comply with any health and safety, corporate or administrative ordinances, regulations, orders, permits, licenses, and laws;
 - iv. Infringement of any intellectual property or other third party rights;
 - v. Discharge or causing the discharge of any hazardous or polluting substance; and
 - vi. Liens, claims, demands, or suits of whatever nature brought by Subrecipient's laborers, subcontractors, material and equipment providers, or other creditors to enforce a right of any kind made upon or against the Services or the real property where the Services are performed.
- C. Indemnity by Subcontractors - Subrecipient agrees to include in any third party contract under this Agreement a provision to the effect that the contractor shall fully indemnify, hold harmless and defend TriMet, Ride Connection, and their directors, officers, employees and agents from and against all claims, suits, actions of whatsoever nature, damages or losses, and all expenses and costs incidental to the investigations and defense, but not limited to the liabilities enumerated above, resulting from or arising out of the activities of such subcontractor, its officers, employees or agents under the contract between Subrecipient and such subcontractor procured pursuant to this Agreement.
- D. Indemnatee Consent - Subrecipient shall not defend any claim in the name of TriMet, or Ride Connection, not purport to act as legal representative of same, without the prior written consent of TriMet, or Ride Connection.
- E. Limitation on Indemnification - Subrecipient's indemnification above shall not include any liability to the extent caused by or resulting from the concurrent negligence of any Indemnitees. Any legal limitations now or hereafter in effect affecting the validity or enforceability of the indemnity, defense and hold harmless obligations assumed by Subrecipient pursuant to this Agreement shall operate to amend the Subrecipient's obligations only to the minimum extent necessary for the indemnity, defense and hold harmless contractual provision to conform with the requirements of such limitations, and as so modified, the obligations shall continue in full force and effect.

7. Vehicle/ Operator Requirements

Subrecipient shall ensure that all drivers of equipment have a valid driver's license and have been approved to drive by Ride Connection. Drivers of equipment designed to carry 16 or more passengers, including the driver, shall have a valid Commercial Driver's License (CDL). Subrecipient shall otherwise ensure that operation of the vehicles is performed in accordance with all applicable laws and regulations.

Subrecipient shall perform criminal, Department of Motor Vehicles and employment background checks as part of the eligibility requirements for all drivers.

Subrecipient shall only let approved drivers transport customers or drive Ride Connection network vehicles.

8. Funding

- A. No more than monthly, Ride Connection shall reimburse Subrecipient for costs associated with activities outlined in Exhibit A. Reimbursement requests will only be paid when actual costs have been incurred and not beforehand.

Ride Connection shall pay Subrecipient for full, complete, and satisfactory performance of the Services, upon Ride Connection's receipt of payment from TriMet for Subrecipient's Services, at the price and/or rates mutually agreed by the parties under this Agreement for the applicable project. No other costs, rates, or fees shall be payable to the Subrecipient. Except as set forth in this Agreement, Subrecipient shall bear sole responsibility for all additional expenses incurred in connection with its performance of the Services.

- B. The maximum funding to be disbursed to Subrecipient under this Agreement is **\$206,670**
- C. Subrecipient shall document eligible use TriMet general funds in accordance with this Agreement.
- D. All invoices shall be submitted electronically to Ride Connection Accounts Payable at accountspayable@rideconnection.org.
- E. Payment Terms - Subrecipient shall submit to Ride Connection monthly invoices and any other documentation requested by Ride Connection for payment at such times as will enable Ride Connection to apply for payment from TriMet in a timely manner. When required by Ride Connection, and as a condition precedent to any payment, and particularly final payment, Subrecipient shall provide, in a form satisfactory to Ride Connection, lien releases, claim waivers, and affidavits of payment from Subrecipient, and its lower-tier subcontractors and suppliers of any tier, for any portion of Subrecipient's Services.

9. Term

This Agreement shall be in effect from 7/1/2018 through 6/30/2019, unless the Agreement is terminated earlier as provided in this Agreement.

10. Communications

All communications between the parties regarding this Agreement shall be directed to the parties' respective Project Managers as indicated below:

Ride Connection:
Dean Orr
Ride Connection
9955 NE Glisan St.
Portland, OR 97220

Subrecipient:
Stefanie Reid
Clackamas County Consortium
2051 Kaen Rd
Oregon City, OR 97045-1819

If one party finds a need to designate a new Project Manager, they shall immediately notify the other party in writing, electronic mail, or other dated documentation.

11. Assignment/Subcontracts

Subrecipient shall not enter into subcontracts for performance of Services under this Agreement except as may be specifically authorized by this Agreement in the attached and incorporated Exhibit A.

Subrecipient may not assign, delegate or subcontract any of its rights or obligations under this Agreement to any other party without the prior written consent of Ride Connection. Any assignment, delegation or subcontract in violation of this paragraph shall be null and void, and shall constitute grounds for immediate termination by Ride Connection.

12. Dispute Resolution

Executive Negotiation - The Parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement, or any breach hereof or any Services performed hereunder, promptly by negotiation between executives who have authority to settle the controversy. Any party may give the other party written notice of any dispute not resolved during the normal course of business. Such notice shall include a statement of that party's position and documentation supporting that parties claim and the name and title of the executive who will be representing that party and any other person who will accompany the executive. The receiving party shall respond in kind within five (5) days of the date of notice. Within ten (10) days after delivery of the initial notice, the executives of both parties shall meet at a mutually acceptable time and place and use good faith efforts to resolve the dispute. If dispute is not then resolved, either party may give the other written notice that these executive negotiations are concluded. Negotiations pursuant to this Section shall be confidential and shall be treated as compromise and settlement negotiations for purposes of Law and rules of evidence. Time requirements herein may be modified upon mutual written consent of the parties.

Mediation - In the event that the parties are unable to settle the dispute through direct negotiations as set forth above, all remaining controversies or claims shall then be submitted to mediation within ten (10) days from written notice of concluded negotiations following the Mediation Rules published by the Arbitration Service of Portland, Inc. Unless the parties agree otherwise, mediation shall be held in Portland, Oregon. This Agreement to mediate and any other agreement or consent to mediate entered into in accordance with this Agreement shall be specifically enforceable under the prevailing law of any court having jurisdiction.

Arbitration - In the event that the parties are unable to settle the dispute through negotiation and mediation as set forth above, either party may seek final resolution through binding arbitration pursuant to the Commercial Arbitration Rules of the Arbitration Service of Portland, Inc. for one arbitrator. The arbitrator's decision shall be binding, final, and enforceable by any court with appropriate jurisdiction in accordance with the Rules of the Arbitration Service of Portland, Inc.

Costs and Award - The prevailing party in any arbitration shall be eligible for the award of all dispute resolution costs and expenses, through all tiers of dispute resolution, including mediation, if so awarded by the arbitrator or court of jurisdiction.

13. Claims, Notice

- A. **Notice Period** - Subrecipient shall provide written notice of any claim under this Agreement to Ride Connection within five (5) business days of the circumstances giving rise to the claim or within sufficient time to allow Ride Connection to give notice to funder (whichever is sooner).
- B. **Notice Content** - Any claim by Subrecipient must set forth in detail the entitlement and quantum basis for Subrecipient's claim with supporting data and/or the entitlement basis to Ride Connection.
- C. **Requirement to Continue Services** - Whether or not Subrecipient has a claim pending with Ride Connection, Subrecipient shall continue performing Services under this Agreement. Any suspension of Services by Subrecipient, without written consent by Ride Connection, may be considered by Ride Connection as a material breach of this Agreement. Ride Connection does not waive the requirement for timely written notice and/or timely written submission of the Statement of Claim unless Ride Connection's waiver is unequivocal, explicit, and in writing.

14. Confidential Information

Subrecipient agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Subrecipient uses in maintaining the confidentiality of its own confidential information, but no less stringent as reasonable care, and shall not, without the disclosing entity's prior written consent, 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 the provision of Services hereunder. Subrecipient shall advise Ride Connection immediately if Subrecipient learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Section, and Subrecipient shall, at its expense, cooperate with Ride Connection in seeking injunctive or other equitable relief against any such person.

15. Governing Law

This Agreement shall be governed by the laws of the State of Oregon, to the express exclusion of all other choice of law alternatives.

16. Surviving Provisions

Notwithstanding termination or expiration of this Agreement, the following provisions shall survive and continue to be in full force and effect: 1C (Audit); 6 (Indemnification); 14 (Confidential Information); 18 (Dispute Resolution); 16 Governing Law, 17(Surviving Provisions); Exhibit B 3B (Recordkeeping); and Exhibit F (Insurance).

17. Entire Agreement/Authority

This Agreement and the attached Exhibits A, B, C, D, E, and F constitute the entire Agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made shall be effective only in the specific instance and for the specific purpose given. The failure of Ride Connection to enforce any provision of this Agreement shall not constitute a waiver by Ride Connection of that or any other provision.

If any term of this Agreement is determined by a court to be illegal or conflict with any law, the remaining terms 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.

18. Agreement Documents

This Agreement consists of this document and the following documents, all of which are attached hereto and incorporated herein reference:

- Exhibit A: Scope of Work
- Exhibit B: Specific Agreement Provisions
- Exhibit C: Federal Terms and Conditions
- Exhibit D: Nondiscrimination Certificate
- Exhibit E: Reporting Requirements
- Exhibit F: Insurance Requirements

WISHING TO BE LEGALLY BOUND, the parties have caused this Agreement to be executed below by each party's duly authorized representative:

RIDE CONNECTION, INC.

Signature

Printed Name

Title

Date

CLACKAMAS COUNTY

Commissioner: Jim Bernard, Chair

Commissioner: Sonya Fischer

Commissioner: Ken Humbertson

Commissioner: Paul Savas

Commissioner: Martha Schrader

Signing on Behalf of the Board:

By: _____
Rich Swift, Director
Health, Housing and Human Services

Dated: _____

Approved to Form:

By: _____
Clackamas County Council

Dated: _____

September 20, 2018

Board of County Commissioner
Clackamas County

Members of the Board:

Approval of Agreement #18575, #18576 and #18577 with
Ride Connection, Inc. to Provide Funding for Rides Provided
by Social Services, Transportation Reaching People

Purpose/Outcomes	Social Services-Transportation Reaching People and Senior Center based transportation services to assist older and disabled county residents in meeting their transportation needs to conduct their personal business, grocery shop, medical and/or other appointments.
Dollar Amount and Fiscal Impact	Agreement #18575 Amount \$106,310; Agreement #18576 Amount \$30,086; Agreement #18577 Amount \$30,415. This agreement is funded through the agreements with State of Oregon, Special Transportation Formula Fund (STF).
Funding Source	State of Oregon, ODOT-STF and Tri-Met General funds. No County General Funds are involved
Duration	Effective July 1, 2018 and terminates on June 30, 2019
Previous Board Action	010517-A3
Strategic Plan Alignment	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 needs of older adults in the community.
Contact Person	Brenda Durbin, Director, Social Services Division 503-655-8641
Contract No.	H3S# 8995 (18575), H3S#8996 (18577), H3S#8997(18576)

BACKGROUND:

The Social Services Division of the Health, Housing and Human Services request approval of Agreements #18575, #18576 and #18577 with Ride Connection, Inc. These agreement provides State of Oregon, Special Transportation Formula (STF) funding for rides provided throughout the County by the Social Services Transportation Reaching People (TRP) program. This agreement provides continued funding for FY2018-19 to reimburse TRP for transportation services they provide to Clackamas County seniors and persons with disabilities. These funds help residents to remain independent and engaged in their community as long as possible.

Any disabled adult or person over the age of 60 living in Clackamas has access to transportation services through either their local Adult/Senior Community Centers or the Social Services Transportation Reaching People (TRP) program. Agreements #18575 and #18577 are specific to rides the TRP program provides in either a lift equipped mini-buses or mini-vans driven by paid staff, while Agreement #18576 provides supportive funding for volunteer driver mileage reimbursement for ride they provide in their own vehicles. TRP provides transportation throughout the county and to medical facilities located in the Portland-metro area in these vehicles. When possible riders with a

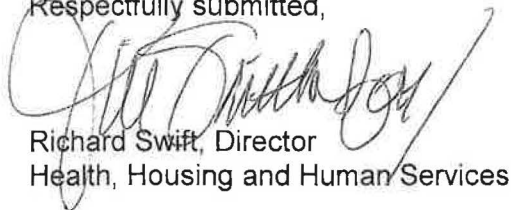
similar destination and arrival time ride together to increase program efficiencies. The majority of TRP rides are for medical transportation. TRP also provides rides for residents to conduct other personal business; including accessing food banks and grocery stores. In general, transportation is provided weekdays between 8:00 am and 5:00pm.

This agreement is late due to Ride Connection not being able to release agreements/modifications to its sub-contractors until their funding source released their agreement and approved the Subrecipient agreements issued by Ride Connection. This resulted in the delay of Ride Connection sending out its agreements for FY18-19. County Council reviewed and approved this agreement on 9/12/18. No County General Funds are involved. This agreement is the first year of the two-year STF grant awarded during the January 2017 application cycle.

RECOMMENDATION:

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

Respectfully submitted,

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

Richard Swift, Director
Health, Housing and Human Services

**SERVICES AGREEMENT #18575
BETWEEN
RIDE CONNECTION INC. and Clackamas County Consortium**

PARTIES:

1. Ride Connection, Inc. ("Ride Connection" or "Recipient"), and
2. Clackamas County Consortium ("Subrecipient")

RECITALS:

1. Ride Connection and Subrecipient enter into this Agreement for the sole purpose of disbursing the approved STF and other funds to Subrecipient for Subrecipient's accomplishment of the Project(s). **Maximum amount of Grant funds shall not exceed \$106,310. These funds shall be used solely for the Project(s) in Exhibit A, and not be used for any other purpose.**
2. Oregon Department of Transportation ("ODOT") has made funds available to Tri-County Metropolitan Transportation District of Oregon ("TriMet") pursuant to the Federal Transportation Administration Program for Enhanced Mobility of Seniors and Individuals With Disabilities, 49 U.S.C. §5310 ("5310 Funds"). Ride Connection is a pass-through recipient of these funds through Grant Agreement/Contract No. JP180303ZC (the "Prime Contract") from TriMet.
3. Oregon Department of Transportation ("ODOT") has made Special Transportation Funds (STF) funds available to Tri-County Metropolitan Transportation District of Oregon ("TriMet"). Ride Connection is a pass-through recipient of these funds through Grant from TriMet.
4. Tri-County Metropolitan Transportation District of Oregon ("TriMet") has made general funds available to Ride Connection, to pass-through to Clackamas County Consortium which provides transportation services inside the TriMet services District.
5. Subrecipient and Ride Connection agree that time is of the essence for all activities comprising the Services under this Agreement.

AGREEMENTS:

1. General

- A. Subrecipient agrees to comply with and use the STF funds in accordance with the terms of this Agreement including the terms of ORS 391.80 through 391.830 and the provisions of OAR Chapter 732 as may be amended, all of which are incorporated into and made part of

this Agreement. Specific contractual requirements applicable to Subrecipient under this Agreement are set forth in Exhibits A, B, C, D, E, and F which are incorporated into and made part of this Agreement. Any conflict among the terms of this Agreement shall be resolved in accordance with the following order of precedence: this Agreement form, Exhibit A, Exhibit B, Exhibit C, and Exhibit D. This Agreement is subject to any agreements between TriMet, and ODOT, and Ride Connection regarding disbursement of STF and other funds, and shall be amended to incorporate those changes.

Subrecipient agrees to comply with all Subrecipient monitoring policies, procedures, and other requirements that may be established by Ride Connection, including but not limited to Title VI compliance.

Subrecipient shall not be relieved of any responsibility of performance of Subrecipient's duties under this Agreement, regardless of any subcontract entered into. Subrecipient shall require any subcontractor performing services under this Agreement to enter into a written agreement with Subrecipient before the commencement of services, which shall require the subcontractor to comply with ORS 391.800 through 391.830, OAR Chapter 732, as may be amended, and the terms of this Agreement. Subrecipient shall specifically include in all subcontracts a requirement that the subcontractor shall be bound by the following paragraphs of this agreement as if the subcontractor were the Subrecipient: Paragraphs 2 through 5.

- B. Scope of Services and Changes** - Subrecipient agrees that it is under a continuing obligation to comply with the foregoing requirements, as they be modified or amended from time to time. Subrecipient further agrees to execute the funded activities described in Exhibit A, in accordance with the terms of those requirements, as they may be amended during the term of this Agreement. This Agreement is subject to any amendments required as a result of agreement between TriMet, ODOT, and Ride Connection or pass-through obligations affecting Subrecipient's scope of Services, and is hereby amended to incorporate those changes. In the event any change to the Services as requested by Ride Connection results in a material increase or decrease in the Services, then an equitable adjustment in the total compensation owed to Subrecipient by Ride Connection shall be determined by Ride Connection and subsequent payments adjusted accordingly.
- C. Audit Right** – Subrecipient agrees that Ride Connection rights of audit and review under Paragraph 2 of this Agreement specifically include Subrecipient's financial records, management and program systems, and any associated records. Subrecipient shall comply with any monitoring and audit requirements established by Ride Connection pertaining to this Agreement.

In the event that any audit or review of Subrecipient's records reveals a variance of Five Percent (5%) or more in cost overruns or charges in excess of any agreed upon price, then Ride Connection's costs of audit or review shall be reimbursed immediately by Subrecipient.

- D. Subcontracts** – Subrecipient shall not enter into subcontracts for performance of Services under this Agreement except as may be specifically authorized by this Agreement in the attached and incorporated Exhibit A. Subrecipient shall not be relieved of any

responsibility for performance of Subrecipient's duties under this Agreement, regardless of any subcontract entered into. Subrecipient agrees that any subcontractor performing services under this Agreement shall comply with the requirements of this Agreement including FTA third-party agreement contract provisions and requirements, as may be amended, and shall enter into a written agreement with each subcontractor requiring the incorporation of those requirements as applicable to each tier. Any delay or defect in the performance of any part of Subrecipient's Services shall not relieve Subrecipient of its primary obligation under this Agreement to ensure timely and satisfactory performance of all the Services. Any subcontractor delay or defect in performance under this Agreement shall be subject to the indemnification provisions of Section 7.

- (1) Subrecipient acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies" 49 CFR Part 31, apply to its actions pertaining to the Services under this Agreement. Upon execution of this Agreement, Subrecipient certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make or cause to be made pertaining to this Agreement. In addition to other penalties that may be applicable, Subrecipient acknowledges that if it makes, or causes to be made a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on Subrecipient to the extent the Federal Government deems appropriate.
 - (2) Subrecipient also acknowledges that if it makes, or causes to be made a false, fictitious or fraudulent claim, statement, submission, or certification to the Federal Government under an Agreement connected with a project that is financed in whole or part with Federal assistance awarded by FTA under 49 U.S.C. Chapter 53 or any other Federal law, the Government reserves the rights to impose penalties of 18 U.S.C. 1001 and 49 U.S.C 5323(1) on Subrecipient, to the extent the Federal Government deems appropriate.
 - (3) Subrecipient agrees to include the above two clauses in each subcontract it awards under this Agreement financed in whole or in part with FTA funds. It is further agreed that the clauses shall not be modified except to identify the subcontractor who will be subject to the provisions.
- E. **Drug-Free Covered Agreement** - This Agreement is a covered transaction for purposes of 49 CFR Part 29. As such, Subrecipient is required to verify that none of Subrecipient, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945. By signing this Agreement, Subrecipient makes a material representation of fact relied upon by Ride Connection that Subrecipient has complied with 49 CFR Part 29. If it is later determined that Subrecipient knowingly rendered an erroneous representation of compliance with 49 CFR Part 29, in addition to and without limitation of the remedies available to Ride Connection, TriMet and the Federal Government may pursue any available remedies, including but not limited to suspension and/or debarment. In addition, Subrecipient is required to comply with 49 CFR 29, Subpart C throughout the term of this Agreement, and

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Subrecipient shall comply with applicable federal, state, and local laws as well as generally accepted accounting principles (GAAP) for accounting, billing, and reporting requirements with STF funds. **Subrecipient shall document the expense of all funds disbursed by Ride Connection under this Agreement.**

- B. Annual Self-Audit - Subrecipient shall follow the requirements stated in the Single Audit Act, 31 U.S.C. 7501 et seq. If Subrecipient expends Federal funds in excess of \$750,000 from all sources in its fiscal year, Subrecipient is subject to audit conducted in accordance with OMB Circular 2 CFR 200, Audits of States, Local governments, Non-profit Institutions. Subrecipient shall, at Subrecipient's own expense, submit to Ride Connection, 9955 NE Glisan St, Portland, OR 97220, an annual audit covering the funds expended under this Agreement and shall submit the annual audit of any subcontractor of Subrecipient responsible for the financial management of funds received under this Agreement.
- C. Audit Passthrough to Subcontractors - Subrecipient further agrees to include in any third party contract under this Agreement a provision to the effect that the contractor must retain and grant Ride Connection, TriMet, ODOT, the U.S. Department of Transportation, and the Comptroller General of the United States, or any of their authorized representatives access to all books, documents, papers and records directly pertinent to the contract, for the purpose of making audit, examination, excerpts and transcriptions, until the expiration of six (6) years (three years for federal retention requirements and an additional three years for state retention requirements) after final payment under the contract or expiration of the contract if expiration is later.
- (1) The periods of access and examination described in subparagraphs A and B of this Paragraph for records that relate to (1) disputes between Ride Connection and Subrecipient, (2) litigation or settlement of claims arising out of the performance of this contract, or (3) costs and expenses of this Agreement as to which exception has been taken by the Comptroller General or any of his or her duly authorized representatives, shall continue until all disputes, claims, litigation, appeals and exceptions have been resolved. Subrecipient agrees to include in any third party contract under this Agreement a provision to this effect.

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In order to be reimbursed, Subrecipient shall submit monthly reports to Ride Connection no later than 20 days after the close of each month. Monthly reports should be remitted via Ride Connection's established process that meets the requirements of Exhibits A, B, and E.

Reports must be in a format acceptable to Ride Connection and include:

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Ride Connection, TriMet, and the State reserve the right to request additional information as may be necessary to comply with state reporting requirements.

4. Withholding of Funds

In addition to any other provisions of this Agreement including but not limited to Exhibits A, B, C, D, E, and F, Ride Connection may withhold payment of funds or offset future payments against funds already paid to Subrecipient if the funds are not being used in accordance with this Agreement, all required reporting has not been submitted, or there are any unresolved audit findings relating to the Subrecipient's performance, subject to the dispute resolution process in Section 12. Subrecipient shall assure that funds allocated hereunder are used only for the purposes permitted, and assumes responsibility for breach of conditions of the STF funding requirements hereunder by Subrecipient. Subrecipient shall, upon breach of conditions that require Ride Connection to reimburse funds to TriMet and or, ODOT or otherwise incur costs from funder withholding of funds, hold harmless and indemnify Ride Connection for an amount equal to the funds required to be repaid or withheld plus any additional costs or expenses incurred by Ride Connection.

In the event a creditor imposes any lien or claim for labor, fringe benefits, taxes, supplies, materials, equipment rental or other charges against the Services covered by this Agreement, thereby legally encumbering the Services, the amount of such obligation may be deducted by Ride Connection from any payment or payments, including retainage, made under this Agreement.

5. Discrimination Prohibited/Compliance with Laws

Subrecipient certifies that no person shall, on the grounds of race, age, religion, color, sex, national origin, physical or mental disability, marital or veteran status, sexual orientation, gender identity, or any other characteristic protected by law, be excluded from participation in, or be denied the benefits of, any activity for which Subrecipient receives STF funds. Subrecipient shall not discriminate against any employee or applicant for employment because of race, age, religion, color, sex, national origin, physical or mental disability, marital or veteran status, sexual orientation, gender identity, or any other characteristic protected by law.

Subrecipient shall comply with all applicable federal, state and local laws, rules and regulations applicable to the work hereunder, including without limitation, provisions required in public contracts under ORS Chapter 279, civil rights laws and all requirements established by the Americans with Disabilities Act of 1990 and FTA regulations at 49 CFR Parts 37 and 38, and all provisions of this Agreement.

6. Independent Contractor/Indemnification

A. The parties agree that Ride Connection shall have no liability of any nature in connection with the Subrecipient's use of the funds or Subrecipient's provision of transportation services. To the fullest extent permitted by law, Subrecipient agrees to fully indemnify, hold harmless and defend, Ride Connection, its directors, officers, employees and agents from and against all claims, suits, actions of whatsoever nature, damages or losses, and all expenses and costs incidental to the investigation and defense, resulting from or arising out of the activities of Subrecipient, its officers, directors, employees, agents, subcontractors and volunteers under this Agreement. The provisions set forth in this subparagraph shall survive termination or expiration of this Agreement.

B. Indemnified Conditions - Subject to the Oregon Tort Claims Act and the Oregon Constitution, Subrecipient agrees to fully indemnify, defend, and hold harmless the State of Oregon, TriMet, Ride Connection and their directors, officers, employees and agents (the "Indemnitees") from and against all claims, suits, actions of whatsoever nature, damages or losses, and all expenses and costs incidental to the investigation and defense, resulting from or arising out of the activities of Subrecipient, its officers, employees or agents under this Agreement, to the fullest extent permitted by law, including but not limited to the following:

- i. Bodily injury or death to any person;
- ii. Property damage to any personal or real property owned by anyone;
- iii. Failure to comply with any health and safety, corporate or administrative ordinances, regulations, orders, permits, licenses, and laws;
- iv. Infringement of any intellectual property or other third party rights;
- v. Discharge or causing the discharge of any hazardous or polluting substance; and
- vi. Liens, claims, demands, or suits of whatever nature brought by Subrecipient's laborers, subcontractors, material and equipment providers, or other creditors to enforce a right of any kind made upon or against the Services or the real property

where the Services are performed.

- C. Indemnity by Subcontractors - Subrecipient agrees to include in any third party contract under this Agreement a provision to the effect that the contractor shall fully indemnify, hold harmless and defend the State of Oregon, TriMet, Ride Connection, and their directors, officers, employees and agents from and against all claims, suits, actions of whatsoever nature, damages or losses, and all expenses and costs incidental to the investigations and defense, but not limited to the liabilities enumerated above, resulting from or arising out of the activities of such subcontractor, its officers, employees or agents under the contract between Subrecipient and such subcontractor procured pursuant to this Agreement.
- D. Indemnitor Consent - Subrecipient shall not defend any claim in the name of the State of Oregon, any Agency of the State of Oregon, TriMet, or Ride Connection, not purport to act as legal representative of same, without the prior written consent of the Oregon Attorney General, TriMet, or Ride Connection.
- E. Limitation on Indemnification - Subrecipient's indemnification above shall not include any liability to the extent caused by or resulting from the concurrent negligence of any Indemnitors. Any legal limitations now or hereafter in effect affecting the validity or enforceability of the indemnity, defense and hold harmless obligations assumed by Subrecipient pursuant to this Agreement shall operate to amend the Subrecipient's obligations only to the minimum extent necessary for the indemnity, defense and hold harmless contractual provision to conform with the requirements of such limitations, and as so modified, the obligations shall continue in full force and effect.

7. Vehicle/ Operator Requirements

Subrecipient shall ensure that all drivers of equipment have a valid driver's license and have been approved to drive by Ride Connection. Drivers of equipment designed to carry 16 or more passengers, including the driver, shall have a valid Commercial Driver's License (CDL). Subrecipient shall otherwise ensure that operation of the vehicles is performed in accordance with all applicable laws and regulations.

Subrecipient shall perform criminal, Department of Motor Vehicles and employment background checks as part of the eligibility requirements for all drivers.

Subrecipient shall only let approved drivers transport customers or drive Ride Connection network vehicles.

8. Funding

- A. No more than monthly, Ride Connection shall reimburse Subrecipient for costs associated with activities outlined in Exhibit A. Reimbursement requests will only be paid when actual costs have been incurred and not beforehand.

Ride Connection shall pay Subrecipient for full, complete, and satisfactory performance of the Services, upon Ride Connection's receipt of payment from TriMet for Subrecipient's Services, at the price and/or rates mutually agreed by the parties under this Agreement for

the applicable project. No other costs, rates, or fees shall be payable to the Subrecipient. Except as set forth in this Agreement, Subrecipient shall bear sole responsibility for all additional expenses incurred in connection with its performance of the Services.

- B. The maximum funding to be disbursed to Subrecipient under this Agreement is **\$106,310**
- C. Subrecipient shall document eligible use of STF funds in accordance with this Agreement.
- D. All invoices shall be submitted electronically to Ride Connection Accounts Payable at accountspayable@rideconnection.org.
- E. Payment Terms - Subrecipient shall submit to Ride Connection monthly invoices and any other documentation requested by Ride Connection for payment at such times as will enable Ride Connection to apply for payment from TriMet in a timely manner. When required by Ride Connection, and as a condition precedent to any payment, and particularly final payment, Subrecipient shall provide, in a form satisfactory to Ride Connection, lien releases, claim waivers, and affidavits of payment from Subrecipient, and its lower-tier subcontractors and suppliers of any tier, for any portion of Subrecipient's Services.

9. Term

This Agreement shall be in effect from 7/1/2018 through 6/30/2019, unless the Agreement is terminated earlier as provided in this Agreement.

10. Communications

All communications between the parties regarding this Agreement shall be directed to the parties' respective Project Managers as indicated below:

Ride Connection:
Dean Orr
Ride Connection
9955 NE Glisan St.
Portland, OR 97220

Subrecipient:
Stefanie Reid
Clackamas County Consortium
2051 Kaen Rd
Oregon City, OR 97045-1819

If one party finds a need to designate a new Project Manager, they shall immediately notify the other party in writing, electronic mail, or other dated documentation.

11. Assignment/Subcontracts

Subrecipient shall not enter into subcontracts for performance of Services under this Agreement except as may be specifically authorized by this Agreement in the attached and incorporated Exhibit A.

Subrecipient may not assign, delegate or subcontract any of its rights or obligations under this Agreement to any other party without the prior written consent of Ride Connection. Any assignment, delegation or subcontract in violation of this paragraph shall be null and void, and shall constitute grounds for immediate termination by Ride Connection.

12. Dispute Resolution

Executive Negotiation - The Parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement, or any breach hereof or any Services performed hereunder, promptly by negotiation between executives who have authority to settle the controversy. Any party may give the other party written notice of any dispute not resolved during the normal course of business. Such notice shall include a statement of that party's position and documentation supporting that parties claim and the name and title of the executive who will be representing that party and any other person who will accompany the executive. The receiving party shall respond in kind within five (5) days of the date of notice. Within ten (10) days after delivery of the initial notice, the executives of both parties shall meet at a mutually acceptable time and place and use good faith efforts to resolve the dispute. If dispute is not then resolved, either party may give the other written notice that these executive negotiations are concluded. Negotiations pursuant to this Section shall be confidential and shall be treated as compromise and settlement negotiations for purposes of Law and rules of evidence. Time requirements herein may be modified upon mutual written consent of the parties.

Mediation - In the event that the parties are unable to settle the dispute through direct negotiations as set forth above, all remaining controversies or claims shall then be submitted to mediation within ten (10) days from written notice of concluded negotiations following the Mediation Rules published by the Arbitration Service of Portland, Inc. Unless the parties agree otherwise, mediation shall be held in Portland, Oregon. This Agreement to mediate and any other agreement or consent to mediate entered into in accordance with this Agreement shall be specifically enforceable under the prevailing law of any court having jurisdiction.

Arbitration - In the event that the parties are unable to settle the dispute through negotiation and mediation as set forth above, either party may seek final resolution through binding arbitration pursuant to the Commercial Arbitration Rules of the Arbitration Service of Portland, Inc. for one arbitrator. The arbitrator's decision shall be binding, final, and enforceable by any court with appropriate jurisdiction in accordance with the Rules of the Arbitration Serviced of Portland, Inc.

Costs and Award - The prevailing party in any arbitration shall be eligible for the award of all dispute resolution costs and expenses, through all tiers of dispute resolution, including meditation, if so awarded by the arbitrator or court of jurisdiction.

13. Claims, Notice

- A. **Notice Period** - Subrecipient shall provide written notice of any claim under this Agreement to Ride Connection within five (5) business days of the circumstances giving rise to the claim or within sufficient time to allow Ride Connection to give notice to funder (whichever is sooner).
- B. **Notice Content** - Any claim by Subrecipient must set forth in detail the entitlement and quantum basis for Subrecipient's claim with supporting data and/or the entitlement basis to Ride Connection.

- C. Requirement to Continue Services - Whether or not Subrecipient has a claim pending with Ride Connection, Subrecipient shall continue performing Services under this Agreement. Any suspension of Services by Subrecipient, without written consent by Ride Connection, may be considered by Ride Connection as a material breach of this Agreement. Ride Connection does not waive the requirement for timely written notice and/or timely written submission of the Statement of Claim unless Ride Connection's waiver is unequivocal, explicit, and in writing.

14. Confidential Information

Subrecipient agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Subrecipient uses in maintaining the confidentiality of its own confidential information, but no less stringent as reasonable care, and shall not, without the disclosing entity's prior written consent, 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 the provision of Services hereunder. Subrecipient shall advise Ride Connection immediately if Subrecipient learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Section, and Subrecipient shall, at its expense, cooperate with Ride Connection in seeking injunctive or other equitable relief against any such person.

15. Governing Law

This Agreement shall be governed by the laws of the State of Oregon, to the express exclusion of all other choice of law alternatives.

16. Surviving Provisions

Notwithstanding termination or expiration of this Agreement, the following provisions shall survive and continue to be in full force and effect: 1C (Audit); 6 (Indemnification); 14 (Confidential Information); 18 (Dispute Resolution); 16 Governing Law, 17(Surviving Provisions); Exhibit B 3B (Recordkeeping); and Exhibit F (Insurance).

17. Entire Agreement/Authority

This Agreement and the attached Exhibits A, B, C, D, E, and F constitute the entire Agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made shall be effective only in the specific instance and for the specific purpose given. The failure of Ride Connection to enforce any provision of this Agreement shall not constitute a waiver by Ride Connection of that or any other provision.

If any term of this Agreement is determined by a court to be illegal or conflict with any law, the remaining terms 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.

18. Agreement Documents

This Agreement consists of this document and the following documents, all of which are attached hereto and incorporated herein reference:

- Exhibit A: Scope of Work
- Exhibit B: Specific Agreement Provisions
- Exhibit C: Federal Terms and Conditions
- Exhibit D: Nondiscrimination Certificate
- Exhibit E: Reporting Requirements
- Exhibit F: Insurance Requirements

WISHING TO BE LEGALLY BOUND, the parties have caused this Agreement to be executed below by each party's duly authorized representative:

RIDE CONNECTION, INC.

Signature

Printed Name

Title

Date

CLACKAMAS COUNTY

Commissioner: Jim Bernard, Chair

Commissioner: Sonya Fischer

Commissioner: Ken Humbertson

Commissioner: Paul Savas

Commissioner: Martha Schrader

Signing on Behalf of the Board:

By: _____
Rich Swift, Director
Health, Housing and Human Services

Dated: _____

Approved to Form:

By: _____
Clackamas County Council

Dated: _____

**SERVICES AGREEMENT #18576
BETWEEN
RIDE CONNECTION INC. and Clackamas County Consortium**

PARTIES:

1. Ride Connection, Inc. ("Ride Connection" or "Recipient"), and
2. Clackamas County Consortium ("Subrecipient")

RECITALS:

1. Ride Connection and Subrecipient enter into this Agreement for the sole purpose of disbursing the approved STF and other funds to Subrecipient for Subrecipient's accomplishment of the Project(s). **Maximum amount of Grant funds shall not exceed \$30,086. These funds shall be used solely for the Project(s) in Exhibit A, and not be used for any other purpose.**
2. Oregon Department of Transportation ("ODOT") has made funds available to Tri-County Metropolitan Transportation District of Oregon ("TriMet") pursuant to the Federal Transportation Administration Program for Enhanced Mobility of Seniors and Individuals With Disabilities, 49 U.S.C. §5310 ("5310 Funds"). Ride Connection is a pass-through recipient of these funds through Grant Agreement/Contract No. JP180303ZC (the "Prime Contract") from TriMet.
3. Oregon Department of Transportation ("ODOT") has made Special Transportation Funds (STF) funds available to Tri-County Metropolitan Transportation District of Oregon ("TriMet"). Ride Connection is a pass-through recipient of these funds through Grant from TriMet.
4. Tri-County Metropolitan Transportation District of Oregon ("TriMet") has made general funds available to Ride Connection, to pass-through to Clackamas County Consortium which provides transportation services inside the TriMet services District.
5. Subrecipient and Ride Connection agree that time is of the essence for all activities comprising the Services under this Agreement.

AGREEMENTS:

1. General

- A. Subrecipient agrees to comply with and use the STF funds in accordance with the terms of this Agreement including the terms of ORS 391.80 through 391.830 and the provisions of OAR Chapter 732 as may be amended, all of which are incorporated into and made part of

this Agreement. Specific contractual requirements applicable to Subrecipient under this Agreement are set forth in Exhibits A, B, C, D, E, and F which are incorporated into and made part of this Agreement. Any conflict among the terms of this Agreement shall be resolved in accordance with the following order of precedence: this Agreement form, Exhibit A, Exhibit B, Exhibit C, and Exhibit D. This Agreement is subject to any agreements between TriMet, and ODOT, and Ride Connection regarding disbursement of STF and other funds, and shall be amended to incorporate those changes.

Subrecipient agrees to comply with all Subrecipient monitoring policies, procedures, and other requirements that may be established by Ride Connection, including but not limited to Title VI compliance.

Subrecipient shall not be relieved of any responsibility of performance of Subrecipient's duties under this Agreement, regardless of any subcontract entered into. Subrecipient shall require any subcontractor performing services under this Agreement to enter into a written agreement with Subrecipient before the commencement of services, which shall require the subcontractor to comply with ORS 391.800 through 391.830, OAR Chapter 732, as may be amended, and the terms of this Agreement. Subrecipient shall specifically include in all subcontracts a requirement that the subcontractor shall be bound by the following paragraphs of this agreement as if the subcontractor were the Subrecipient: Paragraphs 2 through 5.

- B. **Scope of Services and Changes** - Subrecipient agrees that it is under a continuing obligation to comply with the foregoing requirements, as they be modified or amended from time to time. Subrecipient further agrees to execute the funded activities described in Exhibit A, in accordance with the terms of those requirements, as they may be amended during the term of this Agreement. This Agreement is subject to any amendments required as a result of agreement between TriMet, ODOT, and Ride Connection or pass-through obligations affecting Subrecipient's scope of Services, and is hereby amended to incorporate those changes. In the event any change to the Services as requested by Ride Connection results in a material increase or decrease in the Services, then an equitable adjustment in the total compensation owed to Subrecipient by Ride Connection shall be determined by Ride Connection and subsequent payments adjusted accordingly.
- C. **Audit Right** – Subrecipient agrees that Ride Connection rights of audit and review under Paragraph 2 of this Agreement specifically include Subrecipient's financial records, management and program systems, and any associated records. Subrecipient shall comply with any monitoring and audit requirements established by Ride Connection pertaining to this Agreement.

In the event that any audit or review of Subrecipient's records reveals a variance of Five Percent (5%) or more in cost overruns or charges in excess of any agreed upon price, then Ride Connection's costs of audit or review shall be reimbursed immediately by Subrecipient.

- D. **Subcontracts** – Subrecipient shall not enter into subcontracts for performance of Services under this Agreement except as may be specifically authorized by this Agreement in the attached and incorporated Exhibit A. Subrecipient shall not be relieved of any

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- (1) The periods of access and examination described in subparagraphs A and B of this Paragraph for records that relate to (1) disputes between Ride Connection and Subrecipient, (2) litigation or settlement of claims arising out of the performance of this contract, or (3) costs and expenses of this Agreement as to which exception has been taken by the Comptroller General or any of his or her duly authorized representatives, shall continue until all disputes, claims, litigation, appeals and exceptions have been resolved. Subrecipient agrees to include in any third party contract under this Agreement a provision to this effect.

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Ride Connection, TriMet, and the State reserve the right to request additional information as may be necessary to comply with state reporting requirements.

4. Withholding of Funds

In addition to any other provisions of this Agreement including but not limited to Exhibits A, B, C, D, E, and F, Ride Connection may withhold payment of funds or offset future payments against funds already paid to Subrecipient if the funds are not being used in accordance with this Agreement, all required reporting has not been submitted, or there are any unresolved audit findings relating to the Subrecipient's performance, subject to the dispute resolution process in Section 12. Subrecipient shall assure that funds allocated hereunder are used only for the purposes permitted, and assumes responsibility for breach of conditions of the STF funding requirements hereunder by Subrecipient. Subrecipient shall, upon breach of conditions that require Ride Connection to reimburse funds to TriMet and or, ODOT or otherwise incur costs from funder withholding of funds, hold harmless and indemnify Ride Connection for an amount equal to the funds required to be repaid or withheld plus any additional costs or expenses incurred by Ride Connection.

In the event a creditor imposes any lien or claim for labor, fringe benefits, taxes, supplies, materials, equipment rental or other charges against the Services covered by this Agreement, thereby legally encumbering the Services, the amount of such obligation may be deducted by Ride Connection from any payment or payments, including retainage, made under this Agreement.

5. Discrimination Prohibited/Compliance with Laws

Subrecipient certifies that no person shall, on the grounds of race, age, religion, color, sex, national origin, physical or mental disability, marital or veteran status, sexual orientation, gender identity, or any other characteristic protected by law, be excluded from participation in, or be denied the benefits of, any activity for which Subrecipient receives STF funds. Subrecipient shall not discriminate against any employee or applicant for employment because of race, age, religion, color, sex, national origin, physical or mental disability, marital or veteran status, sexual orientation, gender identity, or any other characteristic protected by law.

Subrecipient shall comply with all applicable federal, state and local laws, rules and regulations applicable to the work hereunder, including without limitation, provisions required in public contracts under ORS Chapter 279, civil rights laws and all requirements established by the Americans with Disabilities Act of 1990 and FTA regulations at 49 CFR Parts 37 and 38, and all provisions of this Agreement.

6. Independent Contractor/Indemnification

- A. The parties agree that Ride Connection shall have no liability of any nature in connection with the Subrecipient's use of the funds or Subrecipient's provision of transportation services. To the fullest extent permitted by law, Subrecipient agrees to fully indemnify, hold harmless and defend, Ride Connection, its directors, officers, employees and agents from and against all claims, suits, actions of whatsoever nature, damages or losses, and all expenses and costs incidental to the investigation and defense, resulting from or arising out of the activities of Subrecipient, its officers, directors, employees, agents, subcontractors and volunteers under this Agreement. The provisions set forth in this subparagraph shall survive termination or expiration of this Agreement.
- B. Indemnified Conditions - Subject to the Oregon Tort Claims Act and the Oregon Constitution, Subrecipient agrees to fully indemnify, defend, and hold harmless the State of Oregon, TriMet, Ride Connection and their directors, officers, employees and agents (the "Indemnitees") from and against all claims, suits, actions of whatsoever nature, damages or losses, and all expenses and costs incidental to the investigation and defense, resulting from or arising out of the activities of Subrecipient, its officers, employees or agents under this Agreement, to the fullest extent permitted by law, including but not limited to the following:
- i. Bodily injury or death to any person;
 - ii. Property damage to any personal or real property owned by anyone;
 - iii. Failure to comply with any health and safety, corporate or administrative ordinances, regulations, orders, permits, licenses, and laws;
 - iv. Infringement of any intellectual property or other third party rights;
 - v. Discharge or causing the discharge of any hazardous or polluting substance; and
 - vi. Liens, claims, demands, or suits of whatever nature brought by Subrecipient's laborers, subcontractors, material and equipment providers, or other creditors to enforce a right of any kind made upon or against the Services or the real property

where the Services are performed.

- C. Indemnity by Subcontractors - Subrecipient agrees to include in any third party contract under this Agreement a provision to the effect that the contractor shall fully indemnify, hold harmless and defend the State of Oregon, TriMet, Ride Connection, and their directors, officers, employees and agents from and against all claims, suits, actions of whatsoever nature, damages or losses, and all expenses and costs incidental to the investigations and defense, but not limited to the liabilities enumerated above, resulting from or arising out of the activities of such subcontractor, its officers, employees or agents under the contract between Subrecipient and such subcontractor procured pursuant to this Agreement.
- D. Indemnatee Consent - Subrecipient shall not defend any claim in the name of the State of Oregon, any Agency of the State of Oregon, TriMet, or Ride Connection, not purport to act as legal representative of same, without the prior written consent of the Oregon Attorney General, TriMet, or Ride Connection.
- E. Limitation on Indemnification - Subrecipient's indemnification above shall not include any liability to the extent caused by or resulting from the concurrent negligence of any Indemnitees. Any legal limitations now or hereafter in effect affecting the validity or enforceability of the indemnity, defense and hold harmless obligations assumed by Subrecipient pursuant to this Agreement shall operate to amend the Subrecipient's obligations only to the minimum extent necessary for the indemnity, defense and hold harmless contractual provision to conform with the requirements of such limitations, and as so modified, the obligations shall continue in full force and effect.

7. Vehicle/ Operator Requirements

Subrecipient shall ensure that all drivers of equipment have a valid driver's license and have been approved to drive by Ride Connection. Drivers of equipment designed to carry 16 or more passengers, including the driver, shall have a valid Commercial Driver's License (CDL). Subrecipient shall otherwise ensure that operation of the vehicles is performed in accordance with all applicable laws and regulations.

Subrecipient shall perform criminal, Department of Motor Vehicles and employment background checks as part of the eligibility requirements for all drivers.

Subrecipient shall only let approved drivers transport customers or drive Ride Connection network vehicles.

8. Funding

- A. No more than monthly, Ride Connection shall reimburse Subrecipient for costs associated with activities outlined in Exhibit A. Reimbursement requests will only be paid when actual costs have been incurred and not beforehand.

Ride Connection shall pay Subrecipient for full, complete, and satisfactory performance of the Services, upon Ride Connection's receipt of payment from TriMet for Subrecipient's Services, at the price and/or rates mutually agreed by the parties under this Agreement for

the applicable project. No other costs, rates, or fees shall be payable to the Subrecipient. Except as set forth in this Agreement, Subrecipient shall bear sole responsibility for all additional expenses incurred in connection with its performance of the Services.

- B. The maximum funding to be disbursed to Subrecipient under this Agreement is **\$30,086**
- C. Subrecipient shall document eligible use of STF funds in accordance with this Agreement.
- D. All invoices shall be submitted electronically to Ride Connection Accounts Payable at accountspayable@rideconnection.org.
- E. Payment Terms - Subrecipient shall submit to Ride Connection monthly invoices and any other documentation requested by Ride Connection for payment at such times as will enable Ride Connection to apply for payment from TriMet in a timely manner. When required by Ride Connection, and as a condition precedent to any payment, and particularly final payment, Subrecipient shall provide, in a form satisfactory to Ride Connection, lien releases, claim waivers, and affidavits of payment from Subrecipient, and its lower-tier subcontractors and suppliers of any tier, for any portion of Subrecipient's Services.

9. Term

This Agreement shall be in effect from 7/1/2018 through 6/30/2019, unless the Agreement is terminated earlier as provided in this Agreement.

10. Communications

All communications between the parties regarding this Agreement shall be directed to the parties' respective Project Managers as indicated below:

Ride Connection:
Dean Orr
Ride Connection
9955 NE Glisan St.
Portland, OR 97220

Subrecipient:
Stefanie Reid
Clackamas County Consortium
2051 Kaen Rd
Oregon City, OR 97045-1819

If one party finds a need to designate a new Project Manager, they shall immediately notify the other party in writing, electronic mail, or other dated documentation.

11. Assignment/Subcontracts

Subrecipient shall not enter into subcontracts for performance of Services under this Agreement except as may be specifically authorized by this Agreement in the attached and incorporated Exhibit A.

Subrecipient may not assign, delegate or subcontract any of its rights or obligations under this Agreement to any other party without the prior written consent of Ride Connection. Any assignment, delegation or subcontract in violation of this paragraph shall be null and void, and shall constitute grounds for immediate termination by Ride Connection.

12. Dispute Resolution

Executive Negotiation - The Parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement, or any breach hereof or any Services performed hereunder, promptly by negotiation between executives who have authority to settle the controversy. Any party may give the other party written notice of any dispute not resolved during the normal course of business. Such notice shall include a statement of that party's position and documentation supporting that parties claim and the name and title of the executive who will be representing that party and any other person who will accompany the executive. The receiving party shall respond in kind within five (5) days of the date of notice. Within ten (10) days after delivery of the initial notice, the executives of both parties shall meet at a mutually acceptable time and place and use good faith efforts to resolve the dispute. If dispute is not then resolved, either party may give the other written notice that these executive negotiations are concluded. Negotiations pursuant to this Section shall be confidential and shall be treated as compromise and settlement negotiations for purposes of Law and rules of evidence. Time requirements herein may be modified upon mutual written consent of the parties.

Mediation - In the event that the parties are unable to settle the dispute through direct negotiations as set forth above, all remaining controversies or claims shall then be submitted to mediation within ten (10) days from written notice of concluded negotiations following the Mediation Rules published by the Arbitration Service of Portland, Inc. Unless the parties agree otherwise, mediation shall be held in Portland, Oregon. This Agreement to mediate and any other agreement or consent to mediate entered into in accordance with this Agreement shall be specifically enforceable under the prevailing law of any court having jurisdiction.

Arbitration - In the event that the parties are unable to settle the dispute through negotiation and mediation as set forth above, either party may seek final resolution through binding arbitration pursuant to the Commercial Arbitration Rules of the Arbitration Service of Portland, Inc. for one arbitrator. The arbitrator's decision shall be binding, final, and enforceable by any court with appropriate jurisdiction in accordance with the Rules of the Arbitration Serviced of Portland, Inc.

Costs and Award - The prevailing party in any arbitration shall be eligible for the award of all dispute resolution costs and expenses, through all tiers of dispute resolution, including meditation, if so awarded by the arbitrator or court of jurisdiction.

13. Claims, Notice

- A. **Notice Period** - Subrecipient shall provide written notice of any claim under this Agreement to Ride Connection within five (5) business days of the circumstances giving rise to the claim or within sufficient time to allow Ride Connection to give notice to funder (whichever is sooner).
- B. **Notice Content** - Any claim by Subrecipient must set forth in detail the entitlement and quantum basis for Subrecipient's claim with supporting data and/or the entitlement basis to Ride Connection.

- C. Requirement to Continue Services - Whether or not Subrecipient has a claim pending with Ride Connection, Subrecipient shall continue performing Services under this Agreement. Any suspension of Services by Subrecipient, without written consent by Ride Connection, may be considered by Ride Connection as a material breach of this Agreement. Ride Connection does not waive the requirement for timely written notice and/or timely written submission of the Statement of Claim unless Ride Connection's waiver is unequivocal, explicit, and in writing.

14. Confidential Information

Subrecipient agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Subrecipient uses in maintaining the confidentiality of its own confidential information, but no less stringent as reasonable care, and shall not, without the disclosing entity's prior written consent, 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 the provision of Services hereunder. Subrecipient shall advise Ride Connection immediately if Subrecipient learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Section, and Subrecipient shall, at its expense, cooperate with Ride Connection in seeking injunctive or other equitable relief against any such person.

15. Governing Law

This Agreement shall be governed by the laws of the State of Oregon, to the express exclusion of all other choice of law alternatives.

16. Surviving Provisions

Notwithstanding termination or expiration of this Agreement, the following provisions shall survive and continue to be in full force and effect: 1C (Audit); 6 (Indemnification); 14 (Confidential Information); 18 (Dispute Resolution); 16 Governing Law, 17(Surviving Provisions); Exhibit B 3B (Recordkeeping); and Exhibit F (Insurance).

17. Entire Agreement/Authority

This Agreement and the attached Exhibits A, B, C, D, E, and F constitute the entire Agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made shall be effective only in the specific instance and for the specific purpose given. The failure of Ride Connection to enforce any provision of this Agreement shall not constitute a waiver by Ride Connection of that or any other provision.

If any term of this Agreement is determined by a court to be illegal or conflict with any law, the remaining terms 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.

18. Agreement Documents

This Agreement consists of this document and the following documents, all of which are attached hereto and incorporated herein reference:

- Exhibit A: Scope of Work
- Exhibit B: Specific Agreement Provisions
- Exhibit C: Federal Terms and Conditions
- Exhibit D: Nondiscrimination Certificate
- Exhibit E: Reporting Requirements
- Exhibit F: Insurance Requirements

WISHING TO BE LEGALLY BOUND, the parties have caused this Agreement to be executed below by each party's duly authorized representative:

RIDE CONNECTION, INC.

Signature

Printed Name

Title

Date

CLACKAMAS COUNTY
Commissioner: Jim Bernard, Chair
Commissioner: Sonya Fischer
Commissioner: Ken Humbertson
Commissioner: Paul Savas
Commissioner: Martha Schrader
Signing on Behalf of the Board:

By: _____
Rich Swift, Director
Health, Housing and Human Services

Dated: _____

Approved to Form:

By: _____
Clackamas County Council

Dated: _____

**SERVICES AGREEMENT #18577
BETWEEN
RIDE CONNECTION INC. and Clackamas County Consortium**

PARTIES:

1. Ride Connection, Inc. ("Ride Connection" or "Recipient"), and
2. Clackamas County Consortium ("Subrecipient")

RECITALS:

1. Ride Connection and Subrecipient enter into this Agreement for the sole purpose of disbursing the approved STF and other funds to Subrecipient for Subrecipient's accomplishment of the Project(s). **Maximum amount of Grant funds shall not exceed \$30,415. These funds shall be used solely for the Project(s) in Exhibit A, and not be used for any other purpose.**
2. Oregon Department of Transportation ("ODOT") has made funds available to Tri-County Metropolitan Transportation District of Oregon ("TriMet") pursuant to the Federal Transportation Administration Program for Enhanced Mobility of Seniors and Individuals With Disabilities, 49 U.S.C. §5310 ("5310 Funds"). Ride Connection is a pass-through recipient of these funds through Grant Agreement/Contract No. JP180303ZC (the "Prime Contract") from TriMet.
3. Oregon Department of Transportation ("ODOT") has made Special Transportation Funds (STF) funds available to Tri-County Metropolitan Transportation District of Oregon ("TriMet"). Ride Connection is a pass-through recipient of these funds through Grant from TriMet.
4. Tri-County Metropolitan Transportation District of Oregon ("TriMet") has made general funds available to Ride Connection, to pass-through to Clackamas County Consortium which provides transportation services inside the TriMet services District.
5. Subrecipient and Ride Connection agree that time is of the essence for all activities comprising the Services under this Agreement.

AGREEMENTS:

1. General

- A. Subrecipient agrees to comply with and use the STF funds in accordance with the terms of this Agreement including the terms of ORS 391.80 through 391.830 and the provisions of OAR Chapter 732 as may be amended, all of which are incorporated into and made part of

this Agreement. Specific contractual requirements applicable to Subrecipient under this Agreement are set forth in Exhibits A, B, C, D, E, and F which are incorporated into and made part of this Agreement. Any conflict among the terms of this Agreement shall be resolved in accordance with the following order of precedence: this Agreement form, Exhibit A, Exhibit B, Exhibit C, and Exhibit D. This Agreement is subject to any agreements between TriMet, and ODOT, and Ride Connection regarding disbursement of STF and other funds, and shall be amended to incorporate those changes.

Subrecipient agrees to comply with all Subrecipient monitoring policies, procedures, and other requirements that may be established by Ride Connection, including but not limited to Title VI compliance.

Subrecipient shall not be relieved of any responsibility of performance of Subrecipient's duties under this Agreement, regardless of any subcontract entered into. Subrecipient shall require any subcontractor performing services under this Agreement to enter into a written agreement with Subrecipient before the commencement of services, which shall require the subcontractor to comply with ORS 391.800 through 391.830, OAR Chapter 732, as may be amended, and the terms of this Agreement. Subrecipient shall specifically include in all subcontracts a requirement that the subcontractor shall be bound by the following paragraphs of this agreement as if the subcontractor were the Subrecipient: Paragraphs 2 through 5.

- B. Scope of Services and Changes** - Subrecipient agrees that it is under a continuing obligation to comply with the foregoing requirements, as they be modified or amended from time to time. Subrecipient further agrees to execute the funded activities described in Exhibit A, in accordance with the terms of those requirements, as they may be amended during the term of this Agreement. This Agreement is subject to any amendments required as a result of agreement between TriMet, ODOT, and Ride Connection or pass-through obligations affecting Subrecipient's scope of Services, and is hereby amended to incorporate those changes. In the event any change to the Services as requested by Ride Connection results in a material increase or decrease in the Services, then an equitable adjustment in the total compensation owed to Subrecipient by Ride Connection shall be determined by Ride Connection and subsequent payments adjusted accordingly.
- C. Audit Right** - Subrecipient agrees that Ride Connection rights of audit and review under Paragraph 2 of this Agreement specifically include Subrecipient's financial records, management and program systems, and any associated records. Subrecipient shall comply with any monitoring and audit requirements established by Ride Connection pertaining to this Agreement.

In the event that any audit or review of Subrecipient's records reveals a variance of Five Percent (5%) or more in cost overruns or charges in excess of any agreed upon price, then Ride Connection's costs of audit or review shall be reimbursed immediately by Subrecipient.

- D. Subcontracts** - Subrecipient shall not enter into subcontracts for performance of Services under this Agreement except as may be specifically authorized by this Agreement in the attached and incorporated Exhibit A. Subrecipient shall not be relieved of any

responsibility for performance of Subrecipient's duties under this Agreement, regardless of any subcontract entered into. Subrecipient agrees that any subcontractor performing services under this Agreement shall comply with the requirements of this Agreement including FTA third-party agreement contract provisions and requirements, as may be amended, and shall enter into a written agreement with each subcontractor requiring the incorporation of those requirements as applicable to each tier. Any delay or defect in the performance of any part of Subrecipient's Services shall not relieve Subrecipient of its primary obligation under this Agreement to ensure timely and satisfactory performance of all the Services. Any subcontractor delay or defect in performance under this Agreement shall be subject to the indemnification provisions of Section 7.

- (1) Subrecipient acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies" 49 CFR Part 31, apply to its actions pertaining to the Services under this Agreement. Upon execution of this Agreement, Subrecipient certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make or cause to be made pertaining to this Agreement. In addition to other penalties that may be applicable, Subrecipient acknowledges that if it makes, or causes to be made a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on Subrecipient to the extent the Federal Government deems appropriate.
 - (2) Subrecipient also acknowledges that if it makes, or causes to be made a false, fictitious or fraudulent claim, statement, submission, or certification to the Federal Government under an Agreement connected with a project that is financed in whole or part with Federal assistance awarded by FTA under 49 U.S.C. Chapter 53 or any other Federal law, the Government reserves the rights to impose penalties of 18 U.S.C. 1001 and 49 U.S.C 5323(1) on Subrecipient, to the extent the Federal Government deems appropriate.
 - (3) Subrecipient agrees to include the above two clauses in each subcontract it awards under this Agreement financed in whole or in part with FTA funds. It is further agreed that the clauses shall not be modified except to identify the subcontractor who will be subject to the provisions.
- E. **Drug-Free Covered Agreement** - This Agreement is a covered transaction for purposes of 49 CFR Part 29. As such, Subrecipient is required to verify that none of Subrecipient, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945. By signing this Agreement, Subrecipient makes a material representation of fact relied upon by Ride Connection that Subrecipient has complied with 49 CFR Part 29. If it is later determined that Subrecipient knowingly rendered an erroneous representation of compliance with 49 CFR Part 29, in addition to and without limitation of the remedies available to Ride Connection, TriMet and the Federal Government may pursue any available remedies, including but not limited to suspension and/or debarment. In addition, Subrecipient is required to comply with 49 CFR 29, Subpart C throughout the term of this Agreement, and

must include the requirement to comply with 49 CFR Part 29, Subpart C in any lower tier covered transaction it enters into.

2. Audit Requirements/Financial Management Procedure

- A. STF funds disbursed by this Agreement shall be specifically addressed in Subrecipient's annual audits, and the terms of Exhibit B shall apply. Ride Connection may request additional information including, but not limited to, audits of specific projects or services. Subrecipient will adhere to financial management procedures in accordance with Oregon and other applicable laws, and specifically as provided by ORS 391.800 through 391.830 and OAR Chapter 732 in addition to the requirements set forth in Exhibit B.

Subrecipient shall comply with applicable federal, state, and local laws as well as generally accepted accounting principles (GAAP) for accounting, billing, and reporting requirements with STF funds. **Subrecipient shall document the expense of all funds disbursed by Ride Connection under this Agreement.**

- B. Annual Self-Audit - Subrecipient shall follow the requirements stated in the Single Audit Act, 31 U.S.C. 7501 et seq. If Subrecipient expends Federal funds in excess of \$750,000 from all sources in its fiscal year, Subrecipient is subject to audit conducted in accordance with OMB Circular 2 CFR 200, Audits of States, Local governments, Non-profit Institutions. Subrecipient shall, at Subrecipient's own expense, submit to Ride Connection, 9955 NE Glisan St, Portland, OR 97220, an annual audit covering the funds expended under this Agreement and shall submit the annual audit of any subcontractor of Subrecipient responsible for the financial management of funds received under this Agreement.
- C. Audit Passthrough to Subcontractors - Subrecipient further agrees to include in any third party contract under this Agreement a provision to the effect that the contractor must retain and grant Ride Connection, TriMet, ODOT, the U.S. Department of Transportation, and the Comptroller General of the United States, or any of their authorized representatives access to all books, documents, papers and records directly pertinent to the contract, for the purpose of making audit, examination, excerpts and transcriptions, until the expiration of six (6) years (three years for federal retention requirements and an additional three years for state retention requirements) after final payment under the contract or expiration of the contract if expiration is later.
- (1) The periods of access and examination described in subparagraphs A and B of this Paragraph for records that relate to (1) disputes between Ride Connection and Subrecipient, (2) litigation or settlement of claims arising out of the performance of this contract, or (3) costs and expenses of this Agreement as to which exception has been taken by the Comptroller General or any of his or her duly authorized representatives, shall continue until all disputes, claims, litigation, appeals and exceptions have been resolved. Subrecipient agrees to include in any third party contract under this Agreement a provision to this effect.

- D. The foregoing provisions are in addition to and not in lieu of any other applicable federal or state laws, regulations, rules, circulars or directives. Subrecipient agrees to include in any third party contract under this Agreement a provision to this effect.

3. Reporting Requirements

In order to be reimbursed, Subrecipient shall submit monthly reports to Ride Connection no later than 20 days after the close of each month. Monthly reports should be remitted via Ride Connection's established process that meets the requirements of Exhibits A, B, and E.

Reports must be in a format acceptable to Ride Connection and include:

- A statement of revenues and expenses for each month, including documentation of local match contributions and expenses.
- A description project deliverables, tasks, and schedule completed for each month, including a description of how stated goals are being met.

Reports shall include complete information required by FTA Circular 5010.1C, Chapter III, Section (3) Reporting Requirements, particularly the status of grant activity line items, budget and schedule changes, milestone revisions or cost variances, outstanding claims, change orders and other information that the circular may require. Ride Connection may require additional reporting information from the Subrecipient.

Ride Connection, TriMet, and the State reserve the right to request additional information as may be necessary to comply with state reporting requirements.

4. Withholding of Funds

In addition to any other provisions of this Agreement including but not limited to Exhibits A, B, C, D, E, and F, Ride Connection may withhold payment of funds or offset future payments against funds already paid to Subrecipient if the funds are not being used in accordance with this Agreement, all required reporting has not been submitted, or there are any unresolved audit findings relating to the Subrecipient's performance, subject to the dispute resolution process in Section 12. Subrecipient shall assure that funds allocated hereunder are used only for the purposes permitted, and assumes responsibility for breach of conditions of the STF funding requirements hereunder by Subrecipient. Subrecipient shall, upon breach of conditions that require Ride Connection to reimburse funds to TriMet and or, ODOT or otherwise incur costs from funder withholding of funds, hold harmless and indemnify Ride Connection for an amount equal to the funds required to be repaid or withheld plus any additional costs or expenses incurred by Ride Connection.

In the event a creditor imposes any lien or claim for labor, fringe benefits, taxes, supplies, materials, equipment rental or other charges against the Services covered by this Agreement, thereby legally encumbering the Services, the amount of such obligation may be deducted by Ride Connection from any payment or payments, including retainage, made under this Agreement.

5. Discrimination Prohibited/Compliance with Laws

Subrecipient certifies that no person shall, on the grounds of race, age, religion, color, sex, national origin, physical or mental disability, marital or veteran status, sexual orientation, gender identity, or any other characteristic protected by law, be excluded from participation in, or be denied the benefits of, any activity for which Subrecipient receives STF funds. Subrecipient shall not discriminate against any employee or applicant for employment because of race, age, religion, color, sex, national origin, physical or mental disability, marital or veteran status, sexual orientation, gender identity, or any other characteristic protected by law.

Subrecipient shall comply with all applicable federal, state and local laws, rules and regulations applicable to the work hereunder, including without limitation, provisions required in public contracts under ORS Chapter 279, civil rights laws and all requirements established by the Americans with Disabilities Act of 1990 and FTA regulations at 49 CFR Parts 37 and 38, and all provisions of this Agreement.

6. Independent Contractor/Indemnification

A. The parties agree that Ride Connection shall have no liability of any nature in connection with the Subrecipient's use of the funds or Subrecipient's provision of transportation services. To the fullest extent permitted by law, Subrecipient agrees to fully indemnify, hold harmless and defend, Ride Connection, its directors, officers, employees and agents from and against all claims, suits, actions of whatsoever nature, damages or losses, and all expenses and costs incidental to the investigation and defense, resulting from or arising out of the activities of Subrecipient, its officers, directors, employees, agents, subcontractors and volunteers under this Agreement. The provisions set forth in this subparagraph shall survive termination or expiration of this Agreement.

B. Indemnified Conditions - Subject to the Oregon Tort Claims Act and the Oregon Constitution, Subrecipient agrees to fully indemnify, defend, and hold harmless the State of Oregon, TriMet, Ride Connection and their directors, officers, employees and agents (the "Indemnitees") from and against all claims, suits, actions of whatsoever nature, damages or losses, and all expenses and costs incidental to the investigation and defense, resulting from or arising out of the activities of Subrecipient, its officers, employees or agents under this Agreement, to the fullest extent permitted by law, including but not limited to the following:

- i. Bodily injury or death to any person;
- ii. Property damage to any personal or real property owned by anyone;
- iii. Failure to comply with any health and safety, corporate or administrative ordinances, regulations, orders, permits, licenses, and laws;
- iv. Infringement of any intellectual property or other third party rights;
- v. Discharge or causing the discharge of any hazardous or polluting substance; and
- vi. Liens, claims, demands, or suits of whatever nature brought by Subrecipient's laborers, subcontractors, material and equipment providers, or other creditors to enforce a right of any kind made upon or against the Services or the real property

where the Services are performed.

- C. Indemnity by Subcontractors - Subrecipient agrees to include in any third party contract under this Agreement a provision to the effect that the contractor shall fully indemnify, hold harmless and defend the State of Oregon, TriMet, Ride Connection, and their directors, officers, employees and agents from and against all claims, suits, actions of whatsoever nature, damages or losses, and all expenses and costs incidental to the investigations and defense, but not limited to the liabilities enumerated above, resulting from or arising out of the activities of such subcontractor, its officers, employees or agents under the contract between Subrecipient and such subcontractor procured pursuant to this Agreement.
- D. Indemnatee Consent - Subrecipient shall not defend any claim in the name of the State of Oregon, any Agency of the State of Oregon, TriMet, or Ride Connection, not purport to act as legal representative of same, without the prior written consent of the Oregon Attorney General, TriMet, or Ride Connection.
- E. Limitation on Indemnification - Subrecipient's indemnification above shall not include any liability to the extent caused by or resulting from the concurrent negligence of any Indemnitees. Any legal limitations now or hereafter in effect affecting the validity or enforceability of the indemnity, defense and hold harmless obligations assumed by Subrecipient pursuant to this Agreement shall operate to amend the Subrecipient's obligations only to the minimum extent necessary for the indemnity, defense and hold harmless contractual provision to conform with the requirements of such limitations, and as so modified, the obligations shall continue in full force and effect.

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the applicable project. No other costs, rates, or fees shall be payable to the Subrecipient. Except as set forth in this Agreement, Subrecipient shall bear sole responsibility for all additional expenses incurred in connection with its performance of the Services.

- B. The maximum funding to be disbursed to Subrecipient under this Agreement is **\$30,415**
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- E. Payment Terms - Subrecipient shall submit to Ride Connection monthly invoices and any other documentation requested by Ride Connection for payment at such times as will enable Ride Connection to apply for payment from TriMet in a timely manner. When required by Ride Connection, and as a condition precedent to any payment, and particularly final payment, Subrecipient shall provide, in a form satisfactory to Ride Connection, lien releases, claim waivers, and affidavits of payment from Subrecipient, and its lower-tier subcontractors and suppliers of any tier, for any portion of Subrecipient's Services.

9. Term

This Agreement shall be in effect from 7/1/2018 through 6/30/2019, unless the Agreement is terminated earlier as provided in this Agreement.

10. Communications

All communications between the parties regarding this Agreement shall be directed to the parties' respective Project Managers as indicated below:

Ride Connection:
Dean Orr
Ride Connection
9955 NE Glisan St.
Portland, OR 97220

Subrecipient:
Stefanie Reid
Clackamas County Consortium
2051 Kaen Rd
Oregon City, OR 97045-1819

If one party finds a need to designate a new Project Manager, they shall immediately notify the other party in writing, electronic mail, or other dated documentation.

11. Assignment/Subcontracts

Subrecipient shall not enter into subcontracts for performance of Services under this Agreement except as may be specifically authorized by this Agreement in the attached and incorporated Exhibit A.

Subrecipient may not assign, delegate or subcontract any of its rights or obligations under this Agreement to any other party without the prior written consent of Ride Connection. Any assignment, delegation or subcontract in violation of this paragraph shall be null and void, and shall constitute grounds for immediate termination by Ride Connection.

12. Dispute Resolution

Executive Negotiation - The Parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement, or any breach hereof or any Services performed hereunder, promptly by negotiation between executives who have authority to settle the controversy. Any party may give the other party written notice of any dispute not resolved during the normal course of business. Such notice shall include a statement of that party's position and documentation supporting that parties claim and the name and title of the executive who will be representing that party and any other person who will accompany the executive. The receiving party shall respond in kind within five (5) days of the date of notice. Within ten (10) days after delivery of the initial notice, the executives of both parties shall meet at a mutually acceptable time and place and use good faith efforts to resolve the dispute. If dispute is not then resolved, either party may give the other written notice that these executive negotiations are concluded. Negotiations pursuant to this Section shall be confidential and shall be treated as compromise and settlement negotiations for purposes of Law and rules of evidence. Time requirements herein may be modified upon mutual written consent of the parties.

Mediation - In the event that the parties are unable to settle the dispute through direct negotiations as set forth above, all remaining controversies or claims shall then be submitted to mediation within ten (10) days from written notice of concluded negotiations following the Mediation Rules published by the Arbitration Service of Portland, Inc. Unless the parties agree otherwise, mediation shall be held in Portland, Oregon. This Agreement to mediate and any other agreement or consent to mediate entered into in accordance with this Agreement shall be specifically enforceable under the prevailing law of any court having jurisdiction.

Arbitration - In the event that the parties are unable to settle the dispute through negotiation and mediation as set forth above, either party may seek final resolution through binding arbitration pursuant to the Commercial Arbitration Rules of the Arbitration Service of Portland, Inc. for one arbitrator. The arbitrator's decision shall be binding, final, and enforceable by any court with appropriate jurisdiction in accordance with the Rules of the Arbitration Serviced of Portland, Inc.

Costs and Award - The prevailing party in any arbitration shall be eligible for the award of all dispute resolution costs and expenses, through all tiers of dispute resolution, including meditation, if so awarded by the arbitrator or court of jurisdiction.

13. Claims, Notice

- A. **Notice Period** - Subrecipient shall provide written notice of any claim under this Agreement to Ride Connection within five (5) business days of the circumstances giving rise to the claim or within sufficient time to allow Ride Connection to give notice to funder (whichever is sooner).
- B. **Notice Content** - Any claim by Subrecipient must set forth in detail the entitlement and quantum basis for Subrecipient's claim with supporting data and/or the entitlement basis to Ride Connection.

- C. Requirement to Continue Services - Whether or not Subrecipient has a claim pending with Ride Connection, Subrecipient shall continue performing Services under this Agreement. Any suspension of Services by Subrecipient, without written consent by Ride Connection, may be considered by Ride Connection as a material breach of this Agreement. Ride Connection does not waive the requirement for timely written notice and/or timely written submission of the Statement of Claim unless Ride Connection's waiver is unequivocal, explicit, and in writing.

14. Confidential Information

Subrecipient agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Subrecipient uses in maintaining the confidentiality of its own confidential information, but no less stringent as reasonable care, and shall not, without the disclosing entity's prior written consent, 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 the provision of Services hereunder. Subrecipient shall advise Ride Connection immediately if Subrecipient learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Section, and Subrecipient shall, at its expense, cooperate with Ride Connection in seeking injunctive or other equitable relief against any such person.

15. Governing Law

This Agreement shall be governed by the laws of the State of Oregon, to the express exclusion of all other choice of law alternatives.

16. Surviving Provisions

Notwithstanding termination or expiration of this Agreement, the following provisions shall survive and continue to be in full force and effect: 1C (Audit); 6 (Indemnification); 14 (Confidential Information); 18 (Dispute Resolution); 16 Governing Law, 17(Surviving Provisions); Exhibit B 3B (Recordkeeping); and Exhibit F (Insurance).

17. Entire Agreement/Authority

This Agreement and the attached Exhibits A, B, C, D, E, and F constitute the entire Agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made shall be effective only in the specific instance and for the specific purpose given. The failure of Ride Connection to enforce any provision of this Agreement shall not constitute a waiver by Ride Connection of that or any other provision.

If any term of this Agreement is determined by a court to be illegal or conflict with any law, the remaining terms 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.

18. Agreement Documents

This Agreement consists of this document and the following documents, all of which are attached hereto and incorporated herein reference:

- Exhibit A: Scope of Work
- Exhibit B: Specific Agreement Provisions
- Exhibit C: Federal Terms and Conditions
- Exhibit D: Nondiscrimination Certificate
- Exhibit E: Reporting Requirements
- Exhibit F: Insurance Requirements

WISHING TO BE LEGALLY BOUND, the parties have caused this Agreement to be executed below by each party's duly authorized representative:

RIDE CONNECTION, INC.

Signature

Printed Name

Title

Date

CLACKAMAS COUNTY

Commissioner: Jim Bernard, Chair

Commissioner: Sonya Fischer

Commissioner: Ken Humbertson

Commissioner: Paul Savas

Commissioner: Martha Schrader

Signing on Behalf of the Board:

By: _____

Rich Swift, Director
Health, Housing and Human Services

Dated: _____

Approved to Form:

By: _____
Clackamas County Council

Dated: _____