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BOARD OF COUNTY COMMISSIONERS
PUBLIC SERVICES BUILDING
2051 KAEN ROAD | OREGON CITY, OR 97045

AGENDA – *Revised

Added Consent item C.1

Thursday, May 14, 2020 - 10:00 AM BOARD OF COUNTY COMMISSIONERS

Beginning Board Order No. 2020-36

CALL TO ORDER

- Roll Call
- Pledge of Allegiance

*****COVID-19 Update**

I. **DISCUSSION ITEM** *(The following items will be individually presented by County staff or other appropriate individuals.*

Business & Community Services

1. Approval of Local Grant Agreement between Clackamas County and Micro Enterprise Services of Oregon (MESO) for MESO to Provide Technical Assistance to Businesses, and a Small Grants and Micro-Loan Program on behalf of Clackamas County in an Effort to Support the Local Business Community Impacted by the COVID-19 Pandemic (Laura Zentner and Sarah Eckman, BCS)

II. **CONSENT AGENDA** *(The following Items are considered to be routine, and therefore will not be allotted individual discussion time on the agenda. Many of these items have been discussed by the Board in Work Sessions. The items on the Consent Agenda will be approved in one motion unless a Board member requests, before the vote on the motion, to have an item considered at its regular place on the agenda.)*

A. Health, Housing & Human Services

1. Approval for Agreement #9739 to a Personal Services Agreement with CareOregon for COVID 19 Funding – *Health Centers*
2. Approval for Agreement #9649 to a Participating Provider Agreement with PacificSource Community Solutions for Healthcare Services to Members Enrolled with the Oregon Health Plan (OHP) – *Health Centers*
3. Approval for an Intergovernmental Agreement with Clackamas County Fire District No. 1 for Medical Direction – *Public Health*
4. Approval of a Personal Services Contract with the Catholic Community Services of Western Washington, for Crisis and Acute Transition Services - *Procurement*

B. Department of Transportation & Development

1. Authorization to Purchase Quantity 15 Wavetronix Advance 200-E Extended Range Sensor Systems for the Department of Transportation and Development - *Procurement*
2. Approval of Goods and Services Contract with Potters Industries LLC, to Provide Type II Glass Traffic Beads for Clackamas County - *Procurement*

***C. Department of Finance**

1. Acceptance of a Grant Award from the State of Oregon for the Federal Emergency Management Agency (FEMA) 4499-DR-OR COVID-19 Grant Funding

III. CITIZEN COMMUNICATION *(The Chair of the Board will call for statements from citizens regarding issues relating to County government. It is the intention that this portion of the agenda shall be limited to items of County business which are properly the object of Board consideration and may not be of a personal nature. Persons wishing to speak shall be allowed to do so after registering on the blue card provided on the table outside of the hearing room prior to the beginning of the meeting. Testimony is limited to three (3) minutes. Comments shall be respectful and courteous to all.)*

IV. COUNTY ADMINISTRATOR UPDATE

V. COMMISSIONERS COMMUNICATION

NOTE: Regularly scheduled Business Meetings are televised and broadcast on the Clackamas County Government Channel. These programs are also accessible through the County's Internet site. DVD copies of regularly scheduled BCC Thursday Business Meetings are available for checkout at the Clackamas County Library in Oak Grove. You may also order copies from any library in Clackamas County or the Clackamas County Government Channel. <https://www.clackamas.us/meetings/bcc/business>



May 14, 2020

Board of County Commissioners
 Clackamas County

Members of the Board:

Approval of Local Grant Agreement between Clackamas County and
 Micro Enterprise Services of Oregon (MESO) for MESO to provide technical assistance
 to businesses, and a small grants and micro-loan program on behalf of Clackamas County
 in an effort to support the local business community impacted by the COVID-19 pandemic

Purpose/Outcomes	Approve a Local Grant Agreement between Clackamas County and MESO for MESO to provide assistance to the Clackamas County minority-owned business community in three ways: <ol style="list-style-type: none"> 1) Place MESO staff in Clackamas County for 2-3 days a week (24 hours minimum) to provide technical assistance to 35-45 businesses over the coming year. Technical assistance includes access to MESOs large number of programmatic services. 2) Provide 65 \$1,500 grants (\$100,000 worth) to minority owned businesses in unincorporated Clackamas County impacted by COVID-19. 3) Provide \$100,000 in micro-loans to minority owned businesses in unincorporated Clackamas County impacted by COVID-19.
Dollar Amount and Fiscal Impact	Clackamas County Business and Community Services (BCS) will provide \$326,500 to MESO to fund the above listed programs. These funds were previously budgeted for another project and have been redirected.
Funding Source	Funding utilized is from Oregon State Lottery dollars, previously designated for the formation of the Clackamas County Land Bank Authority, a project that has been put on hold indefinitely due to the COVID-19 pandemic.
Duration	May 14, 2020 through May 31, 2021
Previous Board Action	BCS Director Laura Zentner briefed the Board of County Commissioners on this plan and forthcoming agreement at Administrator's Issues on April 14, 2020 and April 28, 2020.
Strategic Plan Alignment	<ol style="list-style-type: none"> 1) This grant agreement supports the BCS goal of giving businesses access to innovative tools and programs to help them locate or expand in Clackamas County. Providing technical assistance to business impacted by COVID-19 will help them make it through the pandemic so they can reopen under the new normal, and eventually expand when economic times improve. 2) This grant agreement supports County strategic priority of Growing a Vibrant Economy by providing much needed assistance to Clackamas County minority-owned businesses so they can remain in business throughout the COVID-19 pandemic.
County Counsel Review	County Counsel Review Date: May 7, 2020 Counsel Initials: ARN
Procurement Review	Was the item processed through procurement? N/A
Contact Person	Laura Zentner, BCS Director (503) 742-4351 Sarah Eckman, BCS – Deputy Director (503) 742-4303
Contract No.	N/A

BACKGROUND:

Business and Community Services has developed a program with MESO to provide economic and social assistance to those affected by COVID-19. This program will help vulnerable businesses impacted by COVID-19 by providing much needed cash, as well as technical support to develop new talents and skills that make them more marketable.

MESO will provide financial support to the business community via:

- Approximately 65, \$1,500 grants (\$100,000 total)
- Micro-loans leveraged with the MESO funds (\$100,000 Clackamas County funds)
- Criteria that will be used to determine an eligible applicant:
 - Located in unincorporated Clackamas County
 - Can demonstrate having experienced significant loss
 - 10 or fewer employees
 - <\$1mil in gross sales
 - <80% average median income
 - In business for one year or more
 - Minority owned, including women and vets
 - Preference given to childcare providers and those needing childcare

In addition to the financial assistance described above, MESO personnel will place trained personnel in Clackamas County 2-3 days per week (24 hours minimum) to provide technical assistance to 35-45 Clackamas County businesses. Assistance will be targeted towards prosperity zones and low-income regions of the County, supporting the areas most impacted by COVID-19. This program will run one full year, and potentially beyond.

RECOMMENDATION:

Staff respectfully recommends the BCC approve the grant agreement with MESO.

ATTACHMENT:

Local Grant Agreement between Clackamas County and Micro Enterprise Services of Oregon (MESO)

Respectfully submitted,



Laura Zentner, CPA
Director, Business & Community Services

**CLACKAMAS COUNTY, OREGON
LOCAL GRANT AGREEMENT BCS-20-001**

Program Name: **COVID-19 Clackamas County Business Support Package**

Program/Project Number:

This Agreement is between **Clackamas County, Oregon**, acting by and through its
Department of Business and Community Services ("COUNTY") and
Micro Enterprise Services of Oregon ("RECIPIENT"), an Oregon Non-profit Organization.

COUNTY Data

Financial Analyst: **Tracy Grambusch**

Program Contact: **Jon Legarza**

Clackamas County Business and Community Services
Financial Analyst
150 Beaver Creek Rd.
Oregon City, OR 97045
503-742-4368
tgrambusch@clackamas.us

Clackamas County Business and Community Services
Business and Economic Development Coordinator
150 Beaver Creek Rd.
Oregon City, OR 97045
503-742-4366
jlegarza@clackamas.us

RECIPIENT Data

Finance/Fiscal Representative: **David Wilcox**

Program Representative: **Nita Shah**

Micro Enterprise Services of Oregon (MESO)
4008 NE MLK Jr Blvd
Portland OR 97212
503-841-3351
dwilcox@mesopdx.org

Micro Enterprise Services of Oregon (MESO)
4008 NE MLK Jr Blvd
Portland OR 97212
503-841-3351
nshah@mesopdx.org

FEIN: 20-4379510

RECITALS

1. RECIPIENT'S mission is to improve the economic opportunities of underserved individuals impacted by COVID-19 through empowerment, education, entrepreneurship and childcare assistance for the benefit of the greater community.
2. RECIPIENT's access to capital for small and minority businesses will address the challenges and disparities hindering the small businesses community from achieving economic prosperity.
3. RECIPIENT has over 12 years helping small-scale entrepreneurs succeed. RECIPIENT's staff has technical expertise in all areas of micro-enterprise development and small business growth. RECIPIENT emphasizes development of a core business foundation and implementation of strategies focused on financial management, basic and advanced business planning, marketing, customer service and effective operations. Services are based on proven models that are shaped for the local community and individual entrepreneurs..

4. RECIPIENT will provide business development services to assist 35-45 new clients in Clackamas County. RECIPIENT staff will be on location in Clackamas County for 2-3 days per week (minimum 24 hours per week) and provide RECIPIENT's programs and services for one year.
5. RECIPIENT will facilitate a grants and loan program to distribute approximately \$200,000 in funds, equally divided between grants and loans, to Clackamas County businesses impacted by the COVID-19 pandemic.
6. This Grant Agreement of financial assistance sets forth the terms and conditions pursuant to which RECIPIENT agrees on delivery of the Program.

NOW THEREFORE, according to the terms of this Local Grant Agreement ("Agreement"), COUNTY and RECIPIENT 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 by RECIPIENT for expenses approved in writing by COUNTY relating to the project incurred no earlier than **May 1, 2020** and not later than **May 31, 2021**, unless this Agreement is sooner terminated or extended pursuant to the terms hereof. No grant funds are available for expenditures after the expiration date of this Agreement.
2. **Program.** The Program is described in Attached Exhibit A: RECIPIENT Statement of Program Objectives. RECIPIENT agrees to perform the Program in accordance with the terms and conditions of this Agreement.
3. **Standards of Performance.** RECIPIENT shall perform all activities and programs in accordance with the requirements set forth in this Agreement and all applicable laws and regulations. Furthermore, RECIPIENT shall comply with the requirements of the Oregon State Video Lottery dollars that is the source of the grant funding as stated in Oregon Revised Statute ("ORS") 461.512 which prescribes for the management of lottery moneys received by counties and stipulates the required reporting on the use of those lottery dollars. Per the ORS, Oregon State Video Lottery funds are distributed to the counties into a dedicated fund which is set aside for purposes that further economic development, as defined in ORS 461.540(3)(c). SUBRECIPIENT shall further comply with any requirements required by the State of Oregon, together with any and all terms, conditions, and other obligations as may be required by the applicable local, State or Federal agencies providing funding for performance under this Agreement, whether or not specifically referenced herein. SUBRECIPIENT agrees to take all necessary steps, and execute and deliver any and all necessary written instruments, to perform under this Agreement including, but not limited to, executing all additional documentation necessary to comply with applicable State or Federal funding requirements.
4. **Grant Funds.** COUNTY's funding for this Agreement is the Oregon State Video Lottery dollars distributed to COUNTY by the Oregon State Lottery. The maximum, not to exceed, grant amount that COUNTY will pay is **\$321,500**.
5. **Disbursements.** Disbursements will be made in lump sum according to the following schedule:
 - 5.1. \$226,500 immediately upon execution of this agreement for programmatic expenditures allocated as follows:
 - 5.1.1. \$100,000 for small grants to small businesses
 - 5.1.2. \$100,000 for micro-loans to small business
 - 5.1.3. \$20,000 administrative fee to Recipient
 - 5.1.4. \$1,500 fee for online tool set-up

- 5.1.5. \$25,000 for MESO to provide technical assistance to Clackamas County businesses for initial programmatic activities
- 5.2. \$75,000 to fund Recipient's technical assistance program in Clackamas County, per Exhibit A, disbursed as follows:
 - 5.2.1. August 1st, 2020: payment of \$25,000
 - 5.2.2. November 1st, 2020: payment of \$25,000
 - 5.2.3. February 1st, 2021 payment of \$25,000
6. **Repayment of Loan Dollars.** Upon repayment of loan dollars from loan applicant to Recipient, County has first option to be repaid for grant dollars received by Recipient. County, at its discretion, may choose to allow Recipient to retain funds and use for future loans.
7. **Requests for Disbursement.** Disbursements outlined in section 5, above, shall be invoiced by RECIPIENT to COUNTY on RECIPIENT letterhead and referencing agreement number BCS-20-001. Disbursements made from section 5.2 are contingent on receiving programmatic reports as outline in Exhibit C: Performance Reporting and review of program performance by COUNTY.
8. **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. **RECIPIENT 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 RECIPIENT performs work subject to the amendment.
9. **Termination.** This Agreement may be terminated with the mutual consent of both parties, for convenience by one party upon 30 day's written notice to the other, or upon default by a party. This notice may be transmitted 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. B.
10. **Effect of Termination.** The expiration or termination of this Agreement, for any reason, shall not release RECIPIENT from any obligation or liability to COUNTY, or any requirement or obligation that:
 - 10.1. Has already accrued hereunder;
 - 10.2. Comes into effect due to the expiration or termination of the Agreement; or
 - 10.3. Otherwise survives the expiration or termination of this Agreement.

Following the termination of this Agreement, RECIPIENT shall promptly identify all unexpended funds and return all unexpended funds to COUNTY. Unexpended funds are those funds received by RECIPIENT under this Agreement that (i) have not been spent or expended in accordance with the terms of this Agreement; and (ii) are not required to pay allowable costs or expenses that will become due and payable as a result of the termination of this Agreement.
11. **Funds Available and Authorized.** COUNTY certifies that it has been awarded funds sufficient to finance the costs of this Agreement. RECIPIENT understands and agrees that payment of amounts under this Agreement is contingent on COUNTY receiving appropriations or other expenditure authority sufficient to allow COUNTY, in the exercise of its reasonable administrative discretion, to continue to make payments under this Agreement.
12. **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.
13. **Administrative Requirements.** RECIPIENT agrees to its status as a RECIPIENT, and accepts among its duties and responsibilities the following:

- a) **Financial Management.** RECIPIENT 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 COUNTY by July 30, 2021, as described in 11.h, below.
- c) **Budget.** RECIPIENT use of funds may not exceed the amounts specified in the Exhibit B: RECIPIENT Program Budget. RECIPIENT may not transfer grant funds between budget lines without the prior written approval of COUNTY. At no time may budget modifications change the scope of the original grant application or agreement.
- d) **Allowable Uses of Funds.** RECIPIENT shall use funds only for those purposes authorized in this Agreement and in accordance with ORS 461.512 and ORS 461.540(3)(c).
- e) **Period of Availability.** RECIPIENT 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.** RECIPIENT match will be provided per Exhibit D: MESO 40/60 Loan Program.
- g) **Payment.** Routine requests for payment should be submitted as outlined in Section 5.
- h) **Performance Reporting.** RECIPIENT must submit Performance Reports according to the schedule specified in Exhibit C: Performance Reporting. On July 15, 2021, unless extended by amendment, RECIPIENT shall provide to COUNTY a summary of expenses against the budget outlined in Exhibit B: Program Budget. Any funds not expended under the program shall be returned to COUNTY by July 30, 2021.
- i) **Audit.** RECIPIENT shall comply with the audit requirements prescribed by State and Federal law.
- j) **Monitoring.** RECIPIENT agrees to allow access to conduct site visits and inspections of financial and programmatic records for the purpose of monitoring. COUNTY, the State of Oregon Lottery Division, 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 RECIPIENT 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 COUNTY’s discretion.
- k) **Record Retention.** RECIPIENT 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 filing of the final financial report on July 15, 2021 or such longer period as may be required by applicable law, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later.
- l) **Failure to Comply.** RECIPIENT acknowledges and agrees that this Agreement and the terms and conditions therein are essential terms in allowing the relationship between COUNTY and RECIPIENT to continue, and that failure to comply with such terms and conditions represents a material breach of the this Agreement. Such material breach shall give rise to COUNTY’s right,

but not obligation, to withhold RECIPIENT grant funds until compliance is met, reclaim grant funds in the case of omissions or misrepresentations in financial or programmatic reporting, require repayment of any funds used by RECIPIENT in violation of this Agreement, to terminate this Agreement, and to pursue any right or remedy available to COUNTY at law, in equity, or under this Agreement.

14. Compliance with Applicable Laws

- a) **Public Policy.** RECIPIENT 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 RECIPIENT.
- b) **State Statutes.** RECIPIENT 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, RECIPIENT shall in writing request COUNTY resolve the conflict. RECIPIENT shall specify if the conflict(s) create a problem for the design or other Services required under the Agreement.

15. State Procurement Standards

- a) To the extent this Agreement permits RECIPIENT to purchase of goods or services with the funds provided herein, RECIPIENT shall comply with applicable rules governing public contracts, including the Local Contract Review Board (“LCRB”) regulations (Appendix C of Clackamas County Code, located at <http://www.clackamas.us/code/>), which are incorporated by reference herein.
- b) Procurements for goods and services under this award shall use processes as outlined below:

\$0-\$5,000	Direct procurement	One vendor contact
\$5,000-\$50,000	Intermediate procurement	Obtain & document three quotes, award on best value
\$50,000-\$150,000	Intermediate Plus procurement	Issue request for quotes or other appropriate form of solicitation, award on best value
+\$150,000	Formal	Formal solicitation process following written procurement policies

- c) All procurement transactions, whether negotiated or competitively bid and without regard to dollar value, shall be conducted in a manner so as to provide maximum open and free competition. All sole-source procurements in excess of \$5,000 must receive prior written approval from COUNTY in addition to any other approvals required by law applicable to RECIPIENT. Justification for sole-source procurement in excess of \$5,000 should include a description of the project and what is

being contracted for, an explanation of why it is necessary to contract noncompetitively, time constraints and any other pertinent information.

- d) RECIPIENT shall be alert to organizational conflicts of interest or non-competitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. RECIPIENT shall follow chapter 244 of the Oregon Government Ethics Law relating to conflicts of interest. Contractors that develop or draft specifications, requirements, statements of work, and/or solicitations for proposals for a proposed procurement shall be excluded from bidding or submitting a proposal to compete for the award of such procurement. Any request for exemption must be submitted in writing to COUNTY.
- e) RECIPIENT agrees that, to the extent they use contractors or subcontractors, RECIPIENT shall use small, minority-owned, and/or women-owned businesses when possible.

16. General Agreement Provisions.

- a) **Indemnification.** RECIPIENT agrees to indemnify, defend, and hold COUNTY harmless with respect to any claim, cause, damage, action, penalty or other cost (including attorney's and expert fees) arising from or related to RECIPIENT's performance under this Agreement or RECIPIENT's negligent or willful acts or those of its employees, agents or those under RECIPIENT's control. RECIPIENT's obligations hereunder include, but is not limited to, any claim by the State of Oregon regarding misuse of the funds provided by COUNTY under this Agreement. RECIPIENT is solely responsible for the actions of its own agents and employees, and COUNTY assumes no liability or responsibility with respect to RECIPIENT's actions, employees, agents or otherwise with respect to those under its control.
- b) **Insurance.** During the term of this agreement, RECIPIENT shall maintain in force, at its own expense, each insurance noted below:
 - 1) **Commercial General Liability.** RECIPIENT shall obtain, at RECIPIENT's expense, and keep in effect during the term of this Agreement, Commercial General Liability Insurance covering bodily injury, death, and property damage on an "occurrence" form in the amount of not less than \$1,000,000 per occurrence/ \$2,000,000 general aggregate for the protection of COUNTY, its officers, commissioners, and employees. This coverage shall include Contractual Liability insurance for the indemnity provided under this Agreement. This policy(s) shall be primary insurance as respects to COUNTY. Any insurance or self-insurance maintained by COUNTY shall be excess and shall not contribute to it.
 - 2) **Commercial Automobile Liability.** RECIPIENT shall obtain at RECIPIENT 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.** RECIPIENT shall obtain and furnish COUNTY evidence of Professional Liability Insurance covering any damages caused by an error, omission, or negligent act related to the services to be provided under this Agreement, with limits not less than \$2,000,000 per occurrence for the protection of COUNTY, its officers, commissioners and employees against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and damages because of negligent acts, errors and omissions in any way related to this Agreement. COUNTY, at its option, may require a complete copy of the above policy.
 - 4) **Workers' Compensation.** Insurance in compliance with ORS 656.017, which requires all employers that employ subject workers, as defined in ORS 656.027, to provide workers'

compensation coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). If contractor is a subject employer, as defined in ORS 656.023, contractor shall obtain employers' liability insurance coverage limits of not less than \$1,000,000.

- 5) **Additional Insured Provisions.** All 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, but only with respect to RECIPIENT'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 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 RECIPIENT 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, RECIPIENT 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.** RECIPIENT 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.** RECIPIENT agrees to waive their rights of subrogation arising from the work performed under this Agreement.
- c) **Assignment.** RECIPIENT shall not enter into any subcontracts or subawards for any of the Program activities required by the Agreement without prior written approval. This Agreement may not be assigned in whole or in part with the express written approval of COUNTY.
 - d) **Independent Status.** RECIPIENT is independent of COUNTY and will be responsible for any federal, state, or local taxes and fees applicable to payments hereunder. RECIPIENT is not an agent of COUNTY and undertakes this work independent from the control and direction of COUNTY excepting as set forth herein. RECIPIENT shall not seek or have the power to bind COUNTY in any transaction or activity.
 - e) **Notices.** Any notice provided for under this Agreement shall be effective if in writing and (1) delivered personally to the addressee or deposited in the United States mail, postage paid, certified mail, return receipt requested, (2) sent by overnight or commercial air courier (such as Federal Express), (3) sent by facsimile transmission, with the original to follow by regular mail; or, (4) sent by electronic mail with confirming record of delivery confirmation through electronic mail return-receipt, or by confirmation that the electronic mail was accessed, downloaded, or printed.

Notice will be deemed to have been adequately given three days following the date of mailing, or immediately if personally served. For service by facsimile or by electronic mail, service will be deemed effective at the beginning of the next working day.

- f) **Governing Law.** This Agreement is made in the State of Oregon, and shall be governed by and construed in accordance with the laws of that state. Any litigation between COUNTY and RECIPIENT 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 RECIPIENT and supersedes all prior written or oral discussions or Agreements.
- l) **No Attorney Fees.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each party shall be responsible for its own attorneys' fees and expenses.
- m) **Debt Limitation.** This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act, and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.

(Signature Page Attached)

SIGNATURE PAGE TO RECIPIENT AGREEMENT

(CLACKAMAS COUNTY)

AGREED as of the Effective Date.

CLACKAMAS COUNTY, OREGON

MICRO ENTERPRISES SERVICES OF OREGON

By: _____
Chair

By: _____
Nita Shah, Executive Director

Dated: _____

Dated: _____

By: _____
Recording Secretary

Dated: _____

Approved to Form

By: _____
County Counsel

- Exhibit A: RECIPIENT Statement of Program Objectives
- Exhibit B: RECIPIENT Program Budget
- Exhibit C: Performance Reporting
- Exhibit D: RECIPIENT Match Requirements

EXHIBIT A

STATEMENT OF PROGRAM OBJECTIVES

GOAL

Micro Enterprise Services of Oregon (“MESO” or “RECIPIENT”) will establish presence in Clackamas County, providing technical assistance to local businesses. RECIPIENT will also administer a small grants and micro-loan program on behalf of Clackamas County in an effort to support the local business community impacted by the COVID-19 pandemic.

Support to the local business community will be structured as follows:

- MESO personnel will establish a presence in Clackamas County and provide technical assistance to 35-45 Clackamas County businesses. Assistance will be targeted towards prosperity zones and low-income regions of the County, supporting the areas most impacted by COVID-19. This program will run one full year.
- MESO will provide approximately 65 \$1,500 grants (up to \$100,000 in aggregate)
 - Criteria that will be used to determine an eligible applicant:
 - Located in unincorporated Clackamas County
 - Can demonstrate having experienced significant loss
 - 10 or fewer employees
 - <\$1mil in gross sales
 - <80% average median income
 - In business for one year or more
 - Applicant business must be minority owned. Minority owned definition includes women and veterans
 - Preference given to childcare providers and those needing childcare
 - Low-Barrier Minimum Eligibility (as defined below)
 - Business Small Loan Criteria in Exhibit E
- MESO will provide micro-loans leveraged with the MESO funds (\$100,000 in aggregate)
 - Criteria that will be used to determine an eligible applicant:
 - Located in unincorporated Clackamas County
 - Can demonstrate having experienced significant loss
 - 10 or fewer employees
 - <\$1mil in gross sales
 - <80% average median income
 - In business for one year or more
 - Applicant business must be minority owned. Minority owned definition includes women and veterans
 - Preference given to childcare providers and those needing childcare
 - Low-Barrier Minimum Eligibility (as defined below)
 - Business Small Loan Criteria in Exhibit E
 - Loan terms will be defined per Recipient’s proposal outlined in Exhibit F

OBJECTIVES / OUTCOME MEASURES

RECIPIENT expects to provide a 95% success rate in all activities.

Outcome measures seek to quantify the outreach and impact of RECIPIENT's technical assistance programs. Impacts will also include qualitative and quantitative measures such as: numbers paying taxes, generating savings, increased assets, improved credit and bankability and inform interested parties on best practices to work in the business community.

RECIPIENT will provide the following results and will collect data via evaluation, surveys and quarterly assessments:

- # small grants distributed
- # small loans made, and amounts per loan
- % repayment of loans
- 95% of the entrepreneurs will increase incomes by 25%
- 95% will receive access to capital
- 95% will improve their credit
- 95% will open matched savings accounts
- 95% will increase marketing activities through technology, and direct marketing
- 95% will have a business plan for future growth
- 95% will understand financial statements
- 95% will complete survey for best practices

ACTIVITIES

- 1) RECIPIENT to provide staff to be on location in Clackamas County two to three days per week (minimum 24 hours per week) to provide technical assistance to 35-45 new clients for one year.
- 2) Administer a small grants program, distributing \$100,000 in funds via approximately 65, \$1,500 small grants
- 3) Administer a micro-loan program, distributing micro-loans to small businesses meeting pre-agreed upon criteria
 - Up to \$5,000 Clackamas County funds per loan using funding from this Agreement. (RECIPIENT may increase loan size using leveraged money from SBA, USDA and CDFI)
 - Low-Barrier Minimum Eligibility (as defined below)
 - Business Small Loan Criteria in Exhibit E

MESO shall ensure that grantees and loan recipients meet the following criteria:

- Located in unincorporated Clackamas County
- Can demonstrate having experienced significant loss
- 10 or fewer employees
- <\$1mil in gross sales
- <80% average median income
- In business for one year or more
- Applicant business must be minority owned. Minority owned definition includes women and veterans
- Preference given to childcare providers and those needing childcare

RECIPIENT will screen for businesses meeting the Low-Barrier Minimum Eligibility utilizing the questions/criteria outlined below.

Note: Business may be asked to provide additional documentation upon request to verify answers.

1. Has business been negatively affected by the current COVID-19 pandemic? (Yes/No) (Yes = Eligible)

2. Is business physically located in unincorporated Clackamas County? (Yes/No) (Yes = Eligible)

3. If business is part of a chain, is location an individually-owned franchise within Clackamas County? (Yes/No/Not Applicable) (Yes = Eligible)

Note: National chains do not qualify unless individually-owned and location is within Clackamas County.

4. Did business have no more than \$1M in gross revenue in 2019? (Yes/No) (Yes = Eligible)

5. Did business average less than 80% the average median income in 2019? (Yes/No) (Yes = Eligible)

6. Did business have no more than 10 employees between January 1, 2020 and March 23, 2020 (date “Stay Home, Save Lives” Executive Order issued)? (Yes/No) (Yes = Eligible)

7. Has business received funds from similar programs established within Clackamas County after March 23, 2020 (e.g. US Small Business Administration (SBA) Payroll Protection Program, US SBA Economic Injury Disaster Loan Program, etc.)? (Yes/No) (No = Eligible)

Note: Businesses that have received funds from other local programs do not qualify. Businesses that have received federal or state aid still qualify.

7. Is the business a minority and/or woman-owned business enterprise? (Yes/No) (Yes = Eligible)

8. Has business been in operation for at least 1 year? (Yes/No) (Yes = Eligible)

9. Do you as the business owner have an inability to pay for childcare due to the COVID-19 pandemic? (Yes/No) (Yes = Higher priority)

Allowed Expenditures - RECIPIENT will collect information from grantees and loan applicants to verify proper use of funds and report with quarterly progress report. Allowed expenditures are the following:

1. Payroll costs
2. Rent, mortgage, and utilities
3. Childcare costs

EXHIBIT B
PROGRAM BUDGET

Category		Amount			
Business Development Services Program		\$ 100,000.00			
Small Grants		\$ 100,000.00			
Small Grants Administration Fee		\$ 10,000.00			
Micro-Loans		\$ 100,000.00			
Micro-Loan Administration Fee		\$ 10,000.00			
Online Tool Setup Fee		\$ 1,500.00			
		\$321,500.00			

EXHIBIT C PERFORMANCE REPORTING

PERFORMANCE REPORTING SCHEDULE

RECIPIENT will report progress of program activities on a quarterly basis, except in the case of the grants and small loan programs. For these programs, RECIPIENT will submit weekly progress reports until all funds are distributed.

PERFORMANCE REPORTING REQUIREMENTS

Grants and Small Loans Program – submitted weekly until all grants/loans are distributed, quarterly thereafter

Reporting data elements shall be submitted in an excel spreadsheet and include the following information collected from program recipients:

- Business Name
- Date Business Established
- Impact from Covid19
- Number of Employees
- Major Industry (Accommodations, Tourism, Healthcare, Childcare, Manufacturing)
- Use of Grant Funds
- Minority Status
- Gross Sales per month before and after Covid19
- Projected Growth Rate over next 5 years

- # small grants distributed and amount per grant
- # small loans made, amounts per loan, and source of loan funds
- % repayment of loans

RECIPIENT shall report aggregate information on technical assistance program activities in a second excel spreadsheet

- % of the entrepreneurs with incomes increased by 25%
- % business with access to capital
- % of business with improved credit
- % businesses with open matched savings accounts
- % businesses with increased marketing activities through technology, and direct marketing
- % business with a business plan for future growth
- % businesses with trained personnel to understand financial statements
- % businesses that completed survey for best practices

EXHIBIT D MATCH REQUIREMENTS



40/ 60 Open for Business - A Flexible- Forgivable Loan

MESO created the 40/60 Open for Business Loan Program (“40/60”) to reactivate under-resourced businesses from closures due to COVID-19. MESO expects these businesses to need access to flexible and patient capital to navigate the challenging environment that will inevitably follow. 40/60 will provide critical funding that will enable these businesses to resume operations, restore stability and rebuild towards future prosperity. 40/60 loans will be made available to businesses operating in Multnomah, Washington, Clackamas, Yamhill, Columbia, Benton, Marion and Hood River Counties in Oregon and Clark County in Washington. Key features of the 40/60 loan product will include:

- Targeted to small businesses that are owned by individuals who (i) are unable to access credit at reasonable terms; (ii) are income qualified; and (iii) in business for at least six months.
- 40/60 provides loans up to \$50,000 (maximum for forgiveness), leveraged and stacked with other MESO lending capital which is not forgivable.
- 40% of the loan will be forgiven during the first four years. This represents 40% in principal forgiveness and 23.5% in interest subsidy.
- Interest-only loan payments for six months followed by an 18-month interest-only period at a 5% interest rate.
- Amortizing monthly payments at discounted interest rate of 5% from month 25.
- Business support from MESO’s extensive suite of technical assistance offerings.

All 40/60 loans will feature highly-flexible terms that are designed to address the need for capital while also minimizing the future debt burden on the business. The loans will require no debt service payments during the first six months of the loan term, followed by an 18-month interest-only period with a reduced interest rate. In addition to providing debt service flexibility during the first two years of the loan term, up to 40% of the 40/60 loan amount will be forgiven during the first four years, with 10% forgiveness per year if the borrower meets certain conditions, including: consistent loan payment history; business growth demonstrated by 15% annual increases in revenue; self-funding a savings account; hiring; remaining current on tax payments; and other conditions as determined by MESO during underwriting.

Additionally, debt forgiveness will be conditioned upon the borrower's continued participation in MESO's intensive, customized, hands-on technical assistance programs that provide entrepreneurs with as much assistance as they need to help grow and stabilize their businesses. MESO's business assistance offerings include tools to strengthen entrepreneurs and support asset growth, such as financial education, matched savings grants, market research, industry-specific classes and credit building programs. These tools provide pathways to achieve the goals that entrepreneurs set for themselves, their businesses and their families.

ABOUT MESO

Micro Enterprise Services of Oregon (MESO) formed as a grassroots initiative in 2005 to assist small businesses that were experiencing challenges in the wake of gentrification in North and Northeast Portland. Since then we have expanded to cities and counties to support small and local businesses. MESO is a designated SBA microlender, an IDA fiduciary, a USDA RMAP (Rural Microentrepreneur Assistance Program) lender, and a Certified CDFI. MESO fills a much-needed niche, working with small businesses through every stage – from asset building and credit preparedness to first loans and business launches to dozens of business expansions every year.

EXAMPLE TERM SHEET

<p>Investment Purpose</p>	<p>_____ (“Grantor/Donor”) will provide \$_(the “Investment”) to help launch MESO’s 40/60 Open for Business Loan Program (“40/60”). 40/60 will provide flexible loans to support businesses in Multnomah, Washington, Clackamas, Columbia, Yamhill, Linn, Benton, Marion and Hood River Counties in Oregon and Clark County in Washington. 40/60 will be targeted to businesses who:</p> <ul style="list-style-type: none"> - Are unable to access credit at reasonable terms - Have been in business for at least six months - Are open to receiving MESO’s hands-on technical assistance <p>40/60 will provide critical flexible and patient funding that will enable these businesses to reactivate operations, restore stability and rebuild towards future prosperity.</p>
<p>Investment Terms</p>	<p>The Investment will be provided as a grant to MESO. Grantor/Donor’s sole expectation will be to see under-resourced communities receive financing support with highly flexible terms. Any funds recovered by MESO will be used for new lending to similar businesses in the communities MESO serves.</p>
<p>40/60 Loan Terms</p>	<ul style="list-style-type: none"> - Loan Amount: Up to \$50,000 from 40/60, which may be combined with additional funds from other MESO sources to provide larger packaged loans - Loan Term: up to 84 months - Interest-Free Period: 6 months - Interest-Only Period: 18 months - Interest-Only Rate: 5.00% fixed - Interest-Rate Thereafter: 8.00% fixed (beginning in month 25) - Loan Forgiveness: During the first 48 months of the loan, 10% of the 40/60 loan amount will be forgiven upon each 12-month anniversary of the loan closing if MESO determines in its sole discretion that the borrower has met certain conditions, which are expected to include: <ul style="list-style-type: none"> o Consistent loan payment history o Growth demonstrated by 15% annual revenue increases o Employee count increases o Self-funded savings account contributions o Remaining current on tax payments o Ongoing participation in MESO’s technical assistance programs o Other conditions as determined by MESO during underwriting - Loan Fee: Up to 2%



COMPARISON OF LOAN TERMS: \$10,000 - \$50,000

	MESO Standard	Other Lender Standard	MESO 40/60	Other Lender Emergency	MESO 40/60 Alternate
Loan Terms					
Loan Fee	3%	2%	2%	2%	2%
Term	4 years	4 years	5 years	4 years	5 years
Interest Rate/Amortization					
Zero Interest/ No PMT	N/A	N/A	first 6 months	first 3 months	first 6 months
Interest-Only Period	N/A	N/A	next 18 months	next 3 months	next 18 months
Interest Rate	8%	10-12% (Assume 11%)	8%	5%	5%
Forgiveness	N/A	N/A	10% per year for 4 years	N/A	10% per year for 4 years
Underwriting					
Credit Score	No Minimum	>640	No Minimum	>640	No Minimum
Collateral	1 to 1	1.5 to 1	Blanket UCC	Blanket UCC	Blanket UCC
Character	Emphasis	N/A	Emphasis	N/A	Emphasis
Cash Flow	Low Emphasis	Important	Low Emphasis	Important	Low Emphasis
Start Up	Accepted	N/A	Accepted	N/A	Accepted
Technical Assistance	Integrated	N/A	Integrated	N/A	Integrated
Borrower Cost of \$100 Loan					
PV of Debt Service @ 8% Disc. Rate	\$102.32	\$107.15	\$64.76	\$86.24	\$58.15
Borrower Surplus (\$) vs. MESO STD	N/A	(\$4.84)	\$37.56	\$16.07	\$44.17
Borrower Surplus (%) vs. MESO STD	N/A	-4.7%	36.7%	15.7%	43.2%

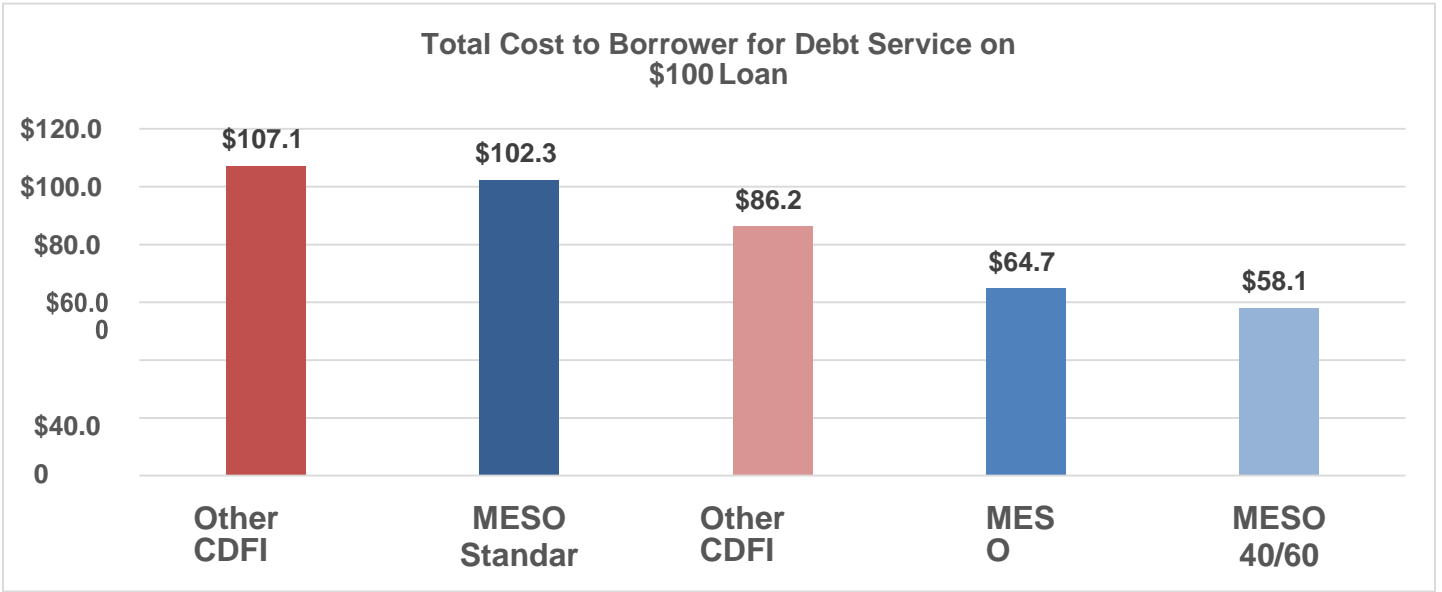




EXHIBIT E
BUSINESS SMALL LOAN EVALUATION CRITERIA

Balance Sheet

1. Does the company collect?
 - a. Are days receivable nearly equal to payment terms?
2. Does the company pay its bills?
 - a. Are days payable about equal to the payment terms?
 - b. Are accounts payable < inventory?
 - c. Are days accrual equal to or less than the payroll cycle?
 - d. Are days accrual equal to or less than the payroll cycle?
 - e. Are taxes current?
3. Does the company control its inventory?
 - a. Are days inventory nearly equal to the inventory cycle?
4. Are the officers of the company committed?
 - a. Are there notes receivable-officers?
 - b. Are there notes payable-officers or subordinated officer debt?
 - c. Is the debt to equity reasonable?
5. Does the company have a profitable operating history?
 - a. Are retained earnings positive?
 - b. Is Net Worth positive?

Profit & Loss Statement

1. Is the company growing?
 - a. Are sales rising?
2. Does the company maintain its margins?
 - a. Is the COGS/sales ratio stable or falling?
3. Does the company control its overhead?
 - a. Is the SGA/sales ratio stable or falling?
 - b. Is officers compensation reasonable?
4. Is the company profitable?
 - a. Is operating profit/sales stable or rising?
 - b. Is EBT/sales stable or rising?
5. Is there any hidden cash flow?

Can the Company Digest its growth?

As companies grow, they need to invest more cash into their operations. This cash investment is called permanent working capital (PWC). As a company grows and invests into PWC, it gets cash from internally generated funds (profits) or from outside sources (debt and equity). We are asking MESO to understand if the company can digest growth with internal funds. If not, how can the company seek funds from MESO resources through our funding to them.



Analyzing Cash Flow

1. Is the company managing its cash wisely?
2. Does the company have any operating cash flow?



EXHIBIT F

4/10/2020

Dear Mr. Legarza

Thank you for the opportunity to submit this proposal. We are requesting \$100,000 to assist 35-45 new clients, with business development services in Clackamas County. MESO staff will be on location for 2-3 days per week and provide MESO’s programs and services.

Micro Enterprise Services of Oregon’s (MESO) mission is “to improve the economic opportunities of underserved and low-income individuals through entrepreneurship, education and empowerment for the benefit of families in the greater community.”

Since 2005, our prime function is to offer business development services to communities that are underserved. We offer a full continuum of small business services and small group trainings to entrepreneurs and have accomplished phenomenal results in business retention, job creation and financial growth.

The following chart is a snapshot of our services and some of our accomplishments.

<i>Services Provided</i>	<i>Delivery Methods</i>	<i>Clients</i>	<i>Accomplishments</i>
1) 1:1 Technical assistance	✓ Meet at business location	• Pre-Businesses	a. 100% success in meeting outcomes
2) Mentoring & Networking	✓ One on One Assistance	• Start-Up’s	b. 85% of our clients have increased their revenues from 30% to as high as 600%
3) Access to Capital/Financing	✓ Small group technical assistance	• Existing Businesses	c. 92% of clients remain in business after graduating from MESO’s 3 yr. program
4) Credit Repair	✓ Classroom training and assistance	• Individuals living below 80% MFI	d. Placed \$10,450,000 in loans
5) Access to Markets	✓ Experts and consultants	• Individuals with Limited English Proficiency	e. Placed \$4,000,000 in IDA savings
6) Financial Literacy & Management	✓ Community linkages	• Individuals of Color	
7) Asset Development		• Individuals Located in Distressed Communities	
8) Business Education & Training			

As point of contact for this proposal, I am happy to verify the accuracy of this proposal and welcome the opportunity to talk with you about MESO's programs and successes.

Sincerely,

Nita Shah, Executive Director

nshah@mesopdx.org

4008 NE Martin Luther King Jr Blvd.

Portland, Oregon 97211

ph (503) 841-3351



What MESO is implementing with COVID-19 challenges for Small Businesses

MESO's COVID work has taken two directions. Firstly, MESO has actively supported Prosper Portland, City of Tigard and Washington County to research, design and distribute a grants and loan programs. In Portland, MESO provided feedback and helped with distributing approximately \$400,000 in grants to small businesses. MESO staff prepared minority and income qualified entrepreneurs to access and navigate links and websites, and successfully apply on time access these resources. MESO is also providing similar service to City of Tigard with a combination of grants and loan program and in Washington County for a grants and loan program. MESO is managing the process from beginning to end and designed forms with criteria from the county.

Secondly, as small businesses are facing tremendous challenges, MESO has pivoted our programming to help small businesses become more adept with the current challenges. The following support is being provided to small businesses. MESO recently launched an online platform, "Open for Business", to help our clients market online or by delivering.

Non-Essential Businesses:

- Daily/Weekly interactions with businesses with technical advisor
- Launching workshops to get everyone's digital marketing in place:
- Basic website build program
- Scheduling online workshops
- Building online persona with Instagram, Facebook, Etsy platform set ups
- Set up online cohort groups to keep businesses connected and motivated.
- Recently our Latino cohort group participated in an Empowerment and Motivation workshop and our African American Women business owners participated in how to do a podcast with Steven Christensen
- Since Farmers Markets are still accepting vendors, we are preparing clients to participate with essential items.

Essential Businesses:

- Construction opportunities, referring these businesses to construction projects
- Service opportunities in healthcare field (can people get employed/subcontracted at this moment to support the COVID environment?),
- Helping businesses to become essential for example, diffusers (candles/perfumes) turning into 'health perfumery, Drinks are turning into health immunity building drinks
- Encouraging and supporting transportation drivers to doing "chores" for people.

MESO continues to look to the future and provide robust resources and support to clients so that they are ready to reboot when the time is right.



Administering a Small Grants/Loan Program

As noted above MESO can take guidelines from the County to design and implement a grant and loan program. The program can be geared to fit the Counties criteria, such as focusing on businesses in unincorporated Clackamas County and cities, with businesses making below \$1,000,000 and less than 10 employees. 50% of the funds can be designated for minority owned, veteran and low income businesses. MESO can pull database reports to identify businesses that meet these criteria's.

MESO has forms and process in place. Our administration fee is 10% of the funds designated to place and \$1,500 for designing links and forms customized to Clackamas County. Once grantees are picked, MESO can distribute grant funds through ACH, wire or physical checks.

MESO cannot process payments for cannabis based businesses.

MESO will provide reports and proof of funds distributed. We expect 3 weeks' minimum for all activities to be completed. At this time, we find the need is to continue support to operational businesses and support businesses that are willing to pivot to other methods of business operation. This might change in the next week and businesses that are closed, might start to operate again. The market conditions are very fluid and MESO is able to be as flexible as possible.

We recommend a grant/loan program combination. If the County has \$500,000 to distribute, \$350,000 can go towards grants of \$1,500 each and \$150,000 can be designated for a micro loan program. MESO can provide loans up to \$25,000 to businesses that are in need of this support.

The terms are simple, with no payments for 6 months, interest at 0%. After 6 months' interest would be at 5%. If additional time is needed MESO would defer payments as long as we can see the business flourishing. We strongly believe that patient capital is needed for the next 12 months.

If and when loan payments do come back, the County's funds will be used as loan loss reserve for future loans. Though historically MESO's default has been less than 1%, we expect and are forecasting a heavy default rate at this time. MESO will leverage funds that are paid back with our own financing capital such as SBA, USDA and CDFI. The funds from the County will be leveraged 3x, so far a loan of \$5,000, MESO will leverage its own funds of \$15,000 to businesses in Clackamas County with the loan loss reserve.



ABOUT MESO

Qualifications and Experience

For the past fifteen years, Micro Enterprise Services of Oregon (MESO), with an experienced and dedicated staff of sixteen, has successfully provided customized business services to entrepreneurs from low-income and underserved communities in Oregon. MESO has demonstrated that low-income individuals, operating small businesses, can provide for their families, create jobs, increase their net worth and support their communities. MESO is a CDFI, an SBA micro lender and a USDA lender.

Over 1500 small businesses, (typically operated by 1-5 employees) have received intensive one-on-one services in business planning, financing and marketing, as well as, ongoing management and business education. An additional 600 entrepreneurs in one year alone have received 1 to 10 hours of staff time through consultations, trainings, referrals to business

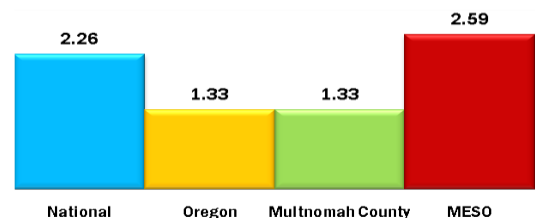
resources, participation in Individual Development Accounts (IDA), and access to marketing and financing resources.

Based on the philosophy that you cannot “mass produce successful small businesses”, we provide intensive support services on an “as needed and as often as needed” basis. This has allowed us to accomplish results that beat national standards in job creation and business retention.

MESO has created a thriving and successful community of diverse small businesses. Some of the highlights of our accomplishments are as follows:

- 85% of clients increased revenues from 30% to as high as 600%
- 92% of clients remain in business after graduating from MESO’s program (surpassing the national standard of 44%)
- \$10,450,000 provided in loans with among what are typically considered high-risk clients with 1% in default (average bank default is 5-8%)
- Clients created new jobs (*see graph at right, 2009*), purchased homes and improved their credit
- 95% success with matched savings grant (IDA)

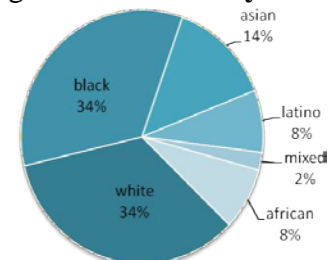
Number Employed by Micro-Businesses
(Employee to Micro-Business Ratio)



Our Experience with Target Audiences

100% of MESO’s existing clients are within the Target Audience for this proposal. We reach these communities through our diverse staff, partnerships, and events. As one funder remarked, “MESO has succeeded in serving a target population that was slipping through the cracks. **Very few organizations** have their in-depth understanding of what it takes to run

a small business or the intensive hands-on approach that is often necessary to help them grow.”





- **People with Limited English/Immigrants/People of Color** While 66% of MESO’s current clients are minority-owned businesses, 28% come from immigrant/refugee communities. With a diverse and well-versed staff in culturally specific services we meet client needs with one-on-one assistance. We listen well to understand each client’s unique situation and to identify his or her specific challenges. From there we build solutions, provide access to resources and increase their capacity to be successful.

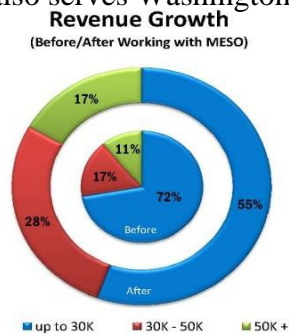
- **Economically Challenged Communities**

MESO has provided direct assistance to businesses operating in N-NE Portland since our inception. We have expanded to include other underserved areas, such as the Lents neighborhood in response to the trend of poverty and disadvantage shifting towards the outer edges of the city, and continue to serve Alberta Main Street, Martin Luther King Jr. Blvd, St. Johns, NE 42nd Avenue, and NE Cully. In these areas we address the devastating economic shifts resulting from gentrification by providing accessible entrepreneurial services. MESO also serves Washington County and City of Gresham

- **People with Modest Incomes**

Approximately 85% of our clients subsisted at or below 50% of the area’s median family income at the time of enrollment, and many had businesses that were struggling to survive. After one year in MESO’s program, the number of clients with incomes above

\$30,000 jumped from 28% to 45% of clients (*right image*). By the third year in MESO’s program, **85%** have increased their revenues from **30% to as high as 600%** of their previous revenues.



Our Experience in Business Development Services

We emphasize development of a core business foundation and the implementation of strategies focused on financial management, basic and advanced business planning, marketing, customer service, and streamlined and effective operations. Screening for highly motivated individuals, providing client-centric resources and access to capital, and providing services in a timely manner and at appropriate learning levels has helped clients grow successful businesses.

- **One-on-one Technical Assistance**

Since the beginning MESO has assisted clients one-on-one. We have gained confidence of our clients, understood their challenges and brought in resources that are effective and centric to their needs. Clients readily share financial information when we meet with them individually, share their inability to fill forms, complete business plans and participate fully in social media/marketing. We become consultant/partner to our clients business, set individualized goals, and provide needed assistance. As their abilities and confidence grows, they are able to participate more fully during group meetings and training.

- **Quality and Customer Service**

MESO emphasizes quality in product/service and in the appearance of the client’s business. Our clients and their employees are provided one-on-one training regarding delivering excellent



customer service. For example, Yenetilla, originally from Ethiopia, received extensive one-on-one training to develop his phone skills which now support his business, A-1 Carpet Cleaning.

- *Access to Capital*

MESO provides access to low interest loan funds to clients who traditionally do not have access through the mainstream financial institutions. Our goal is make them bankable and help them develop prudent saving habits. To this end, we provide creative financing, such as guaranteed credit lines, revolving loans and credit enhancement loans and report to credit bureaus, improving their credit scores and their bankability.

Our success is evident by the success of our clients. MESO clients help restore vitality in distressed neighborhoods, support local vendors and create new jobs. Concurrent with their success in business, is improvement in personal development, long-term financial security, and increased community participation.

Project Approach and Methods

Description of Target Population

- ◆ Individuals living at or below 80% MFI (100% of clients served)
- ◆ Individuals with limited English proficiency
- ◆ Individuals of color (minimum of 50% of clients served)
- ◆ Businesses located in economically challenged priority areas
- ◆ Businesses with 5 or fewer employees

Barriers and challenges: Achieving financial independence is a challenging goal for low-income, minority and immigrant/refugee communities. This is due to the multiple barriers they face, such as lack of financial resources, a first language other than English, and difficulty understanding the financial and business service systems. Entrepreneurship is a viable choice for these communities.

Strengths: These entrepreneurs are resilient, hardworking, put-in long hours, are willing to take risks and remain optimistic about a better life in the future. Given appropriate support they are able to achieve the “American Dream”. As an example, MESO’s client Tonalli’s Donuts, a family-run enterprise (supporting eight family members), is open from 6 am to 12 am, seven days a week. They work hard to not only support the family, but to provide an education for their children. Over the last five years revenues have increased from \$75,000/yr to \$550,000. When asked if she would return to her Office job, Victoria, says that there she would still be a cashier, without hope of an increase in salary. This example resonates with many of our clients.

Needs: Success for our clients is dependent on them receiving assistance in meeting the following needs:

- ◆ **Accessibility and culturally appropriate support:** Timely business development services provided by culturally sensitive, skilled and compassionate professionals.
- ◆ **System navigation:** Focused assistance to understand US business procedures, licensing and policies for self-employment.
- ◆ **Access to business resources:** Support with bookkeeping, marketing, taxes, legal, vendors and planning for growth.



- ◆ **Access to capital:** Establishment of credit through access to affordable loans.

How Target Audience Will Be Identified and Served

Our mission to assist underserved entrepreneurs guides us to identify clients based on income, geography and demographics. Our intake procedure includes multiple interviews, site visits and reference checks. We review income through previous year taxes, employment history, and collective household income. For geographic identification, we look at the client's home and business address to determine a match to our Target Audience. For demographics, clients complete an intake form which requests this information.

We follow basic criteria in determining whether to take on an individual as a client, including adequate experience with business operation, functioning of an ongoing business, and appropriate business preparedness regarding startups. Clients are assessed for needed services, goals are set and staff monitors progress and provides and support to meet goals. Follow-up appointments are made with each visit, thus encouraging clients to meet their assigned goals. Relationship building begins immediately.

Experience Delivering Services to Target Audience

MESO has consistently and successfully served this target audience over the past fifteen years. Women, minorities or immigrants own 66% of businesses currently served. 95% of our clients subsisted 50% of the area's median family income at the time of enrollment.

Though determined to succeed, lack of business understanding, the current economic climate and access to capital restricts potential for growth for these groups. As an example, a non-English speaking client shopped daily for her restaurant. By introducing her to a vendor that delivers, providing a credit enhancement loan to establish credit and helping her with a credit application so she could purchase in bulk has led to substantial saving in time and finances, allowing her to focus more on marketing her business.

Outreach Strategies for Target Audience

We find optimal located to serve the target community. Our strategies are:

- Office located for convenient access
- Solid reputation maintained for effective services and culturally competent staff
- Engagement "at the door" and active recruitment of visiting businesses
- Presentations and trainings at events such as job fairs and main street business events
- Referrals from community-based non-profits, SBDC, and employment offices
- Provision of business Individual Development Accounts to the community

Business Development Services offered

What distinguishes MESO from conventional small business support services programs is our approach to service delivery. We customize our services to each business, providing a hands-on approach that fosters a professional relationship with each business owner and respects their needs, education, and culture. Staff provides timely services to clients on-site at clients' locations allowing us to troubleshoot businesses from the inside out, providing on-the-spot recommendations and guidance, while enabling businesses to continue operations.



We provide these Business Development Services:

- Technical Assistance (ANCHOR)
- Training (EDUCATE)
- Access to Capital (ACE)
- Mentoring/Networking (CONNECT)

Our technical assistance program, **ANCHOR**, begins with a comprehensive assessment allowing us to identify the immediate and long term needs of the entrepreneur. We provide the following assistance:

Program and Topics	Method	Duration
“ANCHOR” Business Planning <ul style="list-style-type: none"> ◆ Growth and Capacity ◆ Human Resources ◆ Licensing 	One-on-One at the business location, MESO’s office, or out in the field	3-years minimum or as long as the client needs

<ul style="list-style-type: none"> ◆ Technology Marketing <ul style="list-style-type: none"> ◆ Communications and Branding ◆ Website and Social Media Accounting <ul style="list-style-type: none"> ◆ Cash Flow and Management ◆ Taxes and Financial Recordkeeping Other Business Related <ul style="list-style-type: none"> ◆ Customer Service ◆ Sales Skills Development ◆ Time Management ◆ Legal Assistance Personal Development <ul style="list-style-type: none"> ◆ Confidence-Building Activities 		the support to succeed
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Our **Access to Capital for Entrepreneurs (ACE)** program, identifies capital needs, works one on-one with clients to fill forms, provide bookkeeping and tax support and coach on presentation skills for our external loan committee.

Program and Topics	Method	Duration
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<p><u>“ACE”</u> Micro-Financing (No-interest-to low-interest)</p> <ul style="list-style-type: none"> ◆ Loan Packaging ◆ Loan Support ◆ Tiered Loans ◆ Revolving Loans ◆ Emergency Loans ◆ Guaranteed Credit-lines ◆ Term Loans <p>Individual Development Accounts Credit Enhancement Loans</p>	<p>One-on-One support and coaching</p>	<p>3 to 7 years, depending on need</p>
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Our **EDUCATE** program, provides **training** and classes to keep up with business trends, strengthen business and financial knowledge, and enrich client abilities to access markets through social media. In the past seven years, 40 training sessions have been offered.

Recently, we have increased our capacity and space to be able to provide more frequent classes and open it to the larger community.

Program and Topics	Method	Duration
<p><u>“EDUCATE”</u> Net Worth building (12 hour series) Business Planning (8 hour series) QuickBooks and Abacus Marketing Social-media (Facebook, websites etc.) Taxes and Legal Issues Time Management and Resiliency</p>	<p>Small groups of businesses needing similar skills</p> <p>Learning is secured through one-on-one support</p>	<p>3 years</p>

MESO did not intend to form a **mentoring/networking program (CONNECT)**. However, clients themselves formed groups that meet regularly to support and learn from each other. Staff facilitate these groups and bring speakers and executive coaches to enhance learning. Long term relationships is build not only with the staff but we encourage clients to get to know each other, and mentor and support one another. As one client says, “we are a family”.





Program and Topics	Method	Duration
<u>“CONNECT”</u> Women’s Group Tax Group Marketing Group	Small groups of businesses needing similar skills or in similar circumstances	3 years

Approach and Service Model

We have incorporated the Tupelo Model (*image right*) in economic development where human and leadership developments are the foundational layers. In order to be successful at building these foundations, we form robust, long-term relationships with clients.

Along with best practices from the Training Microenterprise and the Lending Microenterprise Models, which respectively focus on training in business plans and providing access to capital, we then assist clients to operate, manage and grow their businesses.

MESO selects entrepreneurs who are motivated and have a business or idea with potential. These entrepreneurs are open to scrutiny and willing to implement plan to meet goals. Our services are integrated and seamless. Our approach emphasizes innovation and timely support. We cultivate, nurture and encourage clients through the ups and downs of business. Staff brings broad experience, unique strengths and technical qualifications to benefit clients. Services are provided at the business location as much and as often as needed.

Exit from the program is self-selected by the business owners, generally between 3-5 years. MESO maintains an open door policy. On any given day, between three to five clients drop in to resolve various needs. 80 to 90% of our clients maintain ongoing contact after graduating. We invite clients to networking and training events. Clients are encouraged to “give back” by mentoring new clients. MESO provides continued support and access to capital as graduated clients grow their enterprises. Combining our open door policy with customized support and culturally competent service providers has enabled MESO to build strong, lasting relationships.



Client Process: Screening and Selection

Screening includes several interviews, site visits, and references. For pre-businesses, we assess the potential for success of the ideas. We conduct a thorough evaluation of the owner’s business practices, work ethics and passion. Besides quantifiable reviews of finances, we also consider their attitudes towards change and adaptability to learning additional skills.



Our client review includes assessment of business knowledge, business documentation, formation status, permits and licenses, credit report and tax filings, insurance status, financials and recordkeeping systems, and marketing materials. We also assess the client’s business environment to review their customer service skills, computer literacy, and how the business operates. The final assessment step is determining if their basic necessities are met such as transportation, childcare and housing.

Assistance: Following assessment and acceptance, we develop a plan for work with each individual client. We begin by identifying resources that may be of benefit to the entrepreneur. Staff and the client work together to accomplish business and personal goals. Clients are connected to consultants on an as-needed basis, and provided trainings and resources along their path to success. Clients receive help with business formation, planning, operations, marketing, financing, and other services. Loan applicants are assessed for barriers, and an action plan is implemented to address those barriers and bridge readiness gaps.

Evaluation and Adjustments: Ongoing evaluations based on growth in revenues, skills, assets, jobs and net worth allow staff to help owners make needed adjustments to their marketing and business plan. Annual evaluations include business, marketing, and financial plans; job retention and creation; owner’s draw and credit score; Federal and State tax filings; business and health insurance; and approved, awarded and repaid loans. Owners know that their business plan is a living document that needs to be used and



adjusted as needed.

Client Profile

MESO seeks clients who are motivated to improve or launch their businesses. These are micro-enterprises of 5 or fewer employees. We are uniquely qualified and experienced to work with disenfranchised communities. We prioritize work with clients who are below 80% Portland MFI, operate their businesses in economically challenged priority areas of Portland, and are from communities of color and/or have limited English proficiency. Client businesses may be in Pre-Business, Start-up, or Ongoing Operations phases.



Plan for Long-Term, Core Relationships

Our model is based on forming long term, genuine relationships that are sustained even after clients graduate from our program. Due to the level of one-on-one and small group support, we have historically had strong success maintaining contact with clients. MESO clients feel they are part of a family and return to MESO for help with difficulties and to report their successes.

Clients mentor new businesses, are invited to trainings and our annual graduation banquet.

To this end, we have developed the following guidelines:

- ◆ Clients formally sign a 3-year commitment form
- ◆ MESO has an open door policy so clients can drop in as fits their schedules and needs
- ◆ Staff provide assistance, support and training in a safe, non-judgmental environment
- ◆ Clients are informed of reporting expectations and understand that MESO will contact them within a given time period to collect data
- ◆ Clients are matched with MESO’s loan products or Individual Development Accounts
- ◆ The duration of loans is generally 3-5 years, which allows us to maintain contact
- ◆ A schedule for monthly visits and other activities is established immediately following the assessment phase

Measuring Success

Outcomes (3 years tracked)	Measurements	Timeline
Sustained business operations	➤ Years in business	Quarterly review
Growth of businesses	➤ Gross sales ➤ Gross payroll ➤ Jobs created, retained ➤ Access to capital ➤ Net Income ➤ Profit and Loss, Balance Sheet ➤ Cash flow	Enrollment Review Quarterly review Annual Review for three years from enrollment
Asset growth	➤ 10% growth in business assets	Annual review
Increased employment	➤ Number of jobs created and retained	Quarterly review
Improved credit	➤ 25% will have improvement in credit scores	Annual review
Increased access to capital	➤ 75% will have approved and awarded loans or participate in IDAs	Annual review
One-on-one TA, Mentoring, Training	➤ 100% clients will receive staff assistance	Staff timesheets
Client demographics	➤ 100% at or below 80% MFI ➤ 40% minority owned	Annual review
Clients served	➤ 30-45 new clients	Annual review

May 14, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

Approval for Agreement #9739 to a Personal Services Agreement
with CareOregon for COVID 19 funding.

Purpose/Outcomes	Provides Clackamas Health Centers (CHC) stabilization funding to ensure continuity of services to patients and clients during and after COVID-19.
Dollar Amount and Fiscal Impact	This agreement has a \$680,000 maximum. No County General Funds are involved. No matching funds required.
Funding Source	CareOregon – Coordinated Care Organization (CCO) through the Oregon Health Plan (OHP)
Duration	Effective March 1, 2020 and December 31, 2020 termination.
Previous Board Action	None
Strategic Plan Alignment	1. Individuals and families in need are healthy and safe 2. Ensure Safe, healthy and secure communities
Counsel Review	County Counsel and EOC Command have reviewed and approved this document. It was approved on May 4, 2020.
Contact Person	Deborah Cockrell 503-742-5495
Contract No.	9739

BACKGROUND:

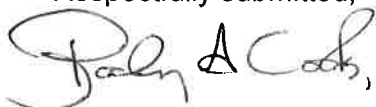
Clackamas Health Centers (CHC) of the Health, Housing and Human Services Department requests the approval of Agreement #9739 to a Personal Services Agreement with CareOregon for the purpose of providing stabilization funding to ensure continuity of services to patients and clients during and after COVID-19.

This is a retroactive agreement to address the impact on CHC clinics and patient care. The contract was received on April 23, 2020. The Agreement is effective March 1, 2020 and December 31, 2020 termination.

RECOMMENDATION:

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

Respectfully submitted,

 Gary A. Cook, H3S Deputy Director / For

Richard Swift, Director
Health, Housing, and Human Services

CareOregon, Inc.
Letter of Agreement
COVID-19 Stabilization Funding

#9739

This Letter of Agreement (Agreement) is between CareOregon, Inc. (CareOregon) and Clackamas County , by and through its Health, Housing, and Human Services, Health Centers Division (Provider) for the period March 1, 2020 through December 31, 2020.

Project: COVID-19 Stabilization Funding
Provider Contact: James Wilson
E-mail: jwilson2@clackamas.us

CareOregon Agreement Number:
CareOregon Contact: Marcus Ruhnke
E-mail: contractmanager@careoregon.org

I. Recitals:

- A. CareOregon and Provider are independent companies.
- B. CareOregon is an entity sub-contracted with Health Share of Oregon (HSO). HSO is contracted with the Oregon Health Authority (OHA) to operate as a Coordinated Care Organizations under the Oregon Health Plan (OHP) via a Health Plan Services agreement ("CCO Contract").
- C. CareOregon is an entity sub-contracted with CareOregon Advantage (COA), a Medicare Advantage plan contracted with the Centers for Medicare and Medicaid Services (CMS).
- D. Provider is contracted with CareOregon under a Provider Services Agreement, and subject to all the regulations of the Oregon Health Plan.
- E. Both parties acknowledge this funding is separate from any of CareOregon's other funding.
- F. This Agreement shall be applicable from the time period between March 1, 2020 through December 31, 2020.

II. Funding Objectives:

The COVID-19 Stabilization Funding is for eligible provider organizations who provide billable primary care and behavioral health services to active Primary CareOregon Medicare Advantage Plus and CareOregon HSO Oregon Health Plan members as of March 2020. The parties are entering into this Agreement to:

- Ensure continuity of services to Primary CareOregon members
- Provide financial stability during the COVID-19 epidemic due to temporary delay and decrease in normal volumes

The funding will be provided based on a calculated funding gap estimation for primary care and behavioral health services defined as the difference between the average monthly claims paid

in 2019 less the estimated 2020 claims (Stabilization Funding Gap). The Stabilization Funding Gap will be adjusted for the following:

- Significant membership changes between 2019 and 2020
- COVID-19 Volume impact estimates (considering telehealth volumes)

This is intended as an interim stabilization funding plan and will be evaluated at least quarterly and any program and/process changes shall be communicated to Provider.

Participating clinics and/or services included in the Provider's system that meet minimum claims and/or membership thresholds for Primary Care Oregon Medicare Advantage Plus and Care Oregon HSO Oregon Health Plan members as of March 2020 have qualified to participate in the COVID-19 Stabilization Funding. Attachment A, provides a list of Participating Clinics, funding CCO's and service types as appropriate.

III. Terms:

- A. Provider agrees to file medical claims to Care Oregon within ninety (90) days for services rendered March 1, 2020 to December 31, 2020 to Primary Care Oregon Medicare Advantage Plus and Care Oregon HSO Oregon Health Plan members as long as Provider is receiving payments through this Agreement. This will allow both parties to appropriately determine the Stabilization Funding Gap. Provider agrees to notify Care Oregon immediately if there are any delays with submitting timely claims.
- B. Care Oregon may request quarterly meetings with provider to review progress and agree upon any process changes.
- C. Both parties agree that this funding is for the period specified above only and does not imply or guarantee ongoing funding.
- D. Funding may be reduced if Provider receives additional funding from other Federal or State Health Care Programs, such as Oregon Health Authority (OHA), Centers for Medicare and Medicaid Services (CMS) or other State or Federal resources. Either party may determine that the Stabilization Funding Gap is no longer necessary at any point throughout the specified period.
- E. Either party can terminate this Agreement immediately but must reconcile any month for which funds have already been released to Provider. If Provider files for bankruptcy, this Agreement terminates immediately.
- F. Providers currently in Peer review Tier status or under Payment integrity review are not eligible for this Stabilization Gap Funding.

IV. Payment:

- A. Care Oregon will pay Provider \$680,000.00 upon receipt of the signed Agreement by both parties.
- B. The initial payment amount represents the estimated Stabilization Funding Gap based on the projected impact of COVID volume loss March 2020 to June 2020 in comparison

to the average monthly claim volume for 2019 adjusted for any significant changes in membership.

- C. CareOregon will complete an initial reconciliation of claims payments within sixty (60) days after each quarter. For claims with dates of service March 2020 to June 2020, the initial reconciliation will be completed by August 31, 2020.
- D. If continuation of this program is determined to be necessary CareOregon may pay Provider an additional payment after completing the initial reconciliation of the Stabilization Funding Gap based on claims submitted for each quarter to determine the appropriate funding less any initial payment made for that quarter. CareOregon reserves the right to modify future quarterly payments based on the most current claims data available.
- E. If the initial payment is greater than the Stabilization Funding Gap, Provider shall pay the difference to CareOregon within sixty (60) days of completing either the initial reconciliation or the final reconciliation as agreed by Provider and CareOregon.
- F. The final reconciliation will be completed within one hundred and twenty (120) days after the final quarter to allow for a three-month claims run out period. Payment for the final reconciliation of the Stabilization Funding Gap will be paid to the appropriate party within sixty (60) days of completing the final reconciliation.
- G. If payment, defined as Stabilization Funding Gap plus 2020 claims paid, are within ten percent (10%) of the average claims paid in 2019, no additional payments or recoupments will be necessary.
- H. If Provider is experiencing sustained hardship and is not reasonably able to pay CareOregon for the overpayment within sixty (60) days of the final reconciliation, CareOregon may deduct overpayments from future claims payments or both parties agree to work in good faith to agree upon a payment arrangement that is sustainable for both parties.

V. General Provisions:

- A. Should Provider's Services Agreement with CareOregon terminate, this funding will cease immediately upon written notification of termination and Provider agrees to refund any paid amounts prorated from the date of termination to the end of the period outlined above.
- B. Provider agrees that the Provider Contact named above is responsible for all aspects of the Agreement, including monitoring progress and performance, obtaining all necessary data and information, and notifying CareOregon of any significant obstacles or delays. Provider will notify CareOregon if the Provider Contact changes.
- C. Both parties agree to seek written approval for, and provide a copy of, any news releases or any other external communication related to the Agreement. Email approval by CareOregon or the Provider Contact will suffice as written approval.

D. CareOregon can terminate the agreement immediately if the safety or health of a member or staff person is threatened.

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

Agreed to on behalf of CareOregon, Inc.:

Signature

Signature

Name: Richard Swift

Name: Eric C. Hunter

Title: Director - H3S

Title: Chief Executive Officer

Date: _____

Date: _____

Tax ID: 93-6002286

Clackamas County Health Centers Division
Payment and Notice Address:

healthcenterap@clackamas.us
Attention: Administrator
Clackamas County Health Centers Division
Address: 2051 Kaen Road, Ste. 367
City, ST, Zip: Oregon City, OR 97045

CareOregon Payment and Notice Address:

Attention: Chief Executive Officer
CareOregon, Inc.
315 S.W. Fifth Avenue
Portland, OR 97204

**ATTACHMENT A
LIST OF PARTICIPATING CLINICS**

Participating Clinic	Line of Business		Service Type	Funding Amount
	CO/HSO	CO Medicare Advantage		
Clackamas County Health Centers Division	X		Primary Care Services	\$ 302,000.00
Clackamas County Health Centers Division		X	Primary Care Services	\$ 13,000.00
Clackamas County Health Centers Division	X		Outpatient SUD	\$ 36,000.00
Clackamas County Health Centers Division	X		Outpatient Mental Health	\$ 329,000.00
Total Funding Amount				\$ 680,000.00

May 14, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

Approval for Agreement #9649 to a Participating Provider Agreement
with PacificSource Community Solutions for Healthcare Services
to members enrolled with the Oregon Health Plan (OHP)

Purpose/Outcomes	Provides Clackamas Health Centers (CHC) implementation of healthcare services to members enrolled with a Coordinated Care Organization (CCO) through PacificSource.
Dollar Amount and Fiscal Impact	CHC is eligible to receive payment for services furnished to assigned members from the PacificSource Health Plan. This is a no maximum agreement. No County General Funds are involved. No matching funds required.
Funding Source	PacificSource Community Solutions through Oregon Health Plan (OHP)
Duration	Effective June 1, 2020 and June 1, 2023 termination.
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
Counsel Review	County Counsel has reviewed and approved this document. It was approved on February 19, 2020.
Contact Person	Deborah Cockrell 503-742-5495
Contract No.	9649

BACKGROUND:

The Clackamas Health Centers (CHC) of the Health, Housing and Human Services Department requests the approval of Agreement #9649 to a Provider Participation Agreement with PacificSource for the purpose of providing healthcare services to PacificSource - Oregon Health Plan (OHP) members.

This agreement will establish a schedule of payments for professional services rendered by CHC Providers to recipients under this Agreement. Implementing and administering healthcare services to patients under the PacificSource Oregon Health Plan will result in fee for service revenue. PacificSource will use formulas and other methodologies set forth in this Agreement as an established CCO.

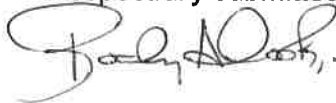
This is a revenue contract for CHC. The patients are being seen at CHC's Health Clinics serving the community. The agreement was approved by counsel on February 19, 2020 with edits as recommended and negotiations in language continued until April 30, 2020. The total amount of the agreement is unknown because the number of authorized patients cannot be projected with certainty. No County General Funds are involved. The Agreement #9649 is effective June 1, 2020, and June 1, 2023 termination.

Page 2 – Staff Report: H3S #9649
May 14, 2020

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, H3S Deputy Director / FOL*

Richard Swift, Director
Health, Housing, and Human Services



PARTICIPATING PROVIDER AGREEMENT

#9649

This Participating Provider Agreement is made and entered into by and between **PacificSource Community Solutions**, an Oregon non-profit corporation ("PacificSource") and **County of Clackamas, Oregon** ("Provider"). The effective date of this Agreement is **June 1, 2020** (the "Effective Date").

WHEREAS, PacificSource is, or is intending to be a company contracted with the State of Oregon, acting by and through the Oregon Health Authority ("OHA"), Health Systems Division ("HSD"), to implement and administer services under the Oregon Health Plan in certain counties in Oregon;

WHEREAS, Provider is either a) a provider who is HSD approved and duly licensed to practice his or her specialty in the State of Oregon or b) a provider entity, which provides services under this Agreement through its partners, independent contractor(s), and/or employee(s), and/or Provider is a facility duly licensed by the state of Oregon for the care of patients and meets the requirements of the state of Oregon laws for staffing and services to provide inpatient, outpatient, and/or emergency services;

WHEREAS, the parties mutually desire to enter into this Agreement to provide Covered Services to PacificSource Members under a Coordinated Care Organization Contract ("CCO Contract") with the OHA; and

WHEREAS, the parties intend that should any reasonable ambiguity arise in the interpretation of a provision of this Agreement, the provision shall be construed to be consistent with the legal requirements of the State of Oregon, the CCO Contract, or other legal requirements, as applicable.

NOW, THEREFORE, in consideration of the mutual covenants and agreements, the parties hereby agree as follows:

1.0 DEFINITIONS

- 1.1 Agreement.** "Agreement" means this Participating Provider Agreement, including any and all recitals, amendments, exhibits, attachments, schedules, and addenda, now or hereafter entered into, between Provider and PacificSource.
- 1.2 Behavioral Health.** "Behavioral Health" means mental health, mental illness, addiction disorders, and substance use disorders.
- 1.3 Clean Claim.** "Clean Claim," means a claim received by PacificSource for payment of Covered Services rendered to a Member which can be processed without obtaining additional information from Provider or from a third party and has been received within the time limitations set forth herein. A Clean Claim does not include a claim from a Provider

who is under investigation for fraud or abuse or a claim under review for Medical Necessity. A Clean Claim is a "clean claim" as defined in 42 CFR 447.45(b).

- 1.4 Coordinated Care Organization.** "Coordinated Care Organization" ("CCO") means a corporation, governmental agency, public corporation, or other legal entity that is certified as meeting the criteria adopted by the Authority under ORS 414.625 to be accountable for care management and to provide integrated and coordinated health care for each of the organization's members.
- 1.5 Copayments.** "Copayments" are defined as a fixed amount a Member is responsible to pay for a Covered Service, as may be provided in the Member's Health Benefit Plan.
- 1.6 Covered Services.** "Covered Services" are defined as Medically Appropriate health services that are funded by the legislature of the State of Oregon and described in ORS 414.706 to 414.770; OAR 410-120-1210, Medical Assistance Benefit Packages and Delivery System; OAR 410-141-0120, Managed Care Prepaid Health Plan Provision of Health Care Services; OAR 410-141-0520, Prioritized List of Health Services; and OAR 410-141-0480, Oregon Health Plan Benefit Package of Covered Services; except as excluded or limited under OAR 410-141-0500, Excluded Services and Limitations for Oregon Health Plan clients and/or Division members; all as such statutes and rules exist today or as amended in the future.
- 1.7 Covering Practitioner.** "Covering Practitioner" means a PacificSource Provider or, with prior PacificSource approval, a practitioner who is not a PacificSource Provider, who provides Covered Services to Members for or on behalf of Provider during an emergency or temporary unavailability such as a vacation or illness.
- 1.8 Emergency Services.** "Emergency Services" are defined as Covered Services from a qualified provider necessary to evaluate or stabilize an emergency medical condition, including inpatient and outpatient treatment that may be necessary to assure within reasonable medical probability that the Member's condition is likely to materially deteriorate from or during a Member's discharge from a facility or transfer to another facility. OAR 410-120-0000(91).
- 1.9 Emergency Medical Condition.** "Emergency Medical Condition" means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in placing the health of the individual (or with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy, serious impairment to bodily functions or serious dysfunction of any bodily organ or part. An Emergency Medical Condition is determined based on the presenting symptoms (not the final diagnosis) as perceived by a prudent layperson (rather than a health care professional) and includes cases in which the absence of immediate medical attention would not in fact have had the adverse results described in the previous sentence. OAR 410-120-0000(89). The decision of whether a condition requires Emergency Services rests with PacificSource and is subject to its procedures for post-treatment utilization review consistent with the standards under federal or Oregon law, as applicable.

- 1.10 Health Benefit Plan.** “Health Benefit Plan” means the Benefit Package, as that term is defined in OAR 410-120-0000(34), of Covered Services under the Oregon Health Plan for which the Member is eligible.
- 1.11 Medically Appropriate.** “Medically Appropriate” means health services, items, or medical supplies that are:
- (a) Recommended by a licensed health provider practicing within the scope of their license;
 - (b) Safe, effective, and appropriate for the patient based on standards of good health practice and generally recognized by the relevant scientific or professional community based on the best available evidence;
 - (c) Not solely for the convenience or preference of a Member or a provider for the service item or medical supply; and
 - (d) The most cost effective of the alternative levels or types of health services, items, or medical supplies that are Covered Services that can be safely and effectively provided to a Member in PacificSource’s judgment. OAR 410-120-0000(145).
- 1.12 Member.** “Member” means an individual who is found eligible by the Oregon Health Authority, including such divisions, programs, and offices as may be established therein, to receive services under the Oregon Health Plan, is enrolled with PacificSource and eligible to receive Covered Services, and to whom Provider is required to provide Covered Services pursuant to this Agreement.
- 1.13 Non-Covered Services.** “Non-Covered Services” are defined as all health care services that are not Covered Services under the Member’s Health Benefit Plan.
- 1.14 Oregon Health Authority.** “Oregon Health Authority” is an Oregon state government agency.
- 1.15 Oregon Health Plan.** “Oregon Health Plan” (“OHP”) means the Oregon Medicaid Demonstration Project, as established by chapter 815, Oregon Laws 1993, and later amended.
- 1.16 Other Payor.** “Other Payor” shall mean other payors for healthcare services, including but not limited to PacificSource subsidiaries, trusts, and governmental entities or authorized contracting entities or divisions, with whom PacificSource has entered into a contract.
- 1.17 PacificSource Provider Manual.** “PacificSource Provider Manual” means a document developed and maintained by PacificSource, which provides instruction regarding standard policy and procedural requirements of PacificSource and is provided online on PacificSource’s website in the provider section.
- 1.18 PacificSource Providers.** “PacificSource Providers” means institutional or non-institutional health care entities or individuals that are under contract, directly or indirectly, with PacificSource to provide Covered Services to Members.
- 1.19 Substance Use Disorders.** “Substance Use Disorders” means disorders related to the taking of a drug of abuse including alcohol, to the side effects of a medication, or to a toxin exposure. The disorders include substance use disorders, such as substance dependence

and substance abuse, and substance-induced disorders, such as substance intoxication, withdrawal, delirium, dementia, and substance-induced psychotic or mood disorder, as defined in DSM-V criteria.

1.20 Urgent Care Services. "Urgent Care Services" are defined as Covered Services that are Medically Appropriate and immediately required to prevent a serious deterioration of a Member's health that results from an unforeseen illness or an injury. OAR 410-120-0000(250). Services that can be foreseen by the individual are not considered Urgent Care Services.

2.0 PROVIDER RESPONSIBILITIES.

2.1 Provider Services; Requirements. Provider shall:

- (a) Provide or arrange for the provision of Covered Services to Members and beneficiaries of any Other Payor (i.e. PacificSource Health Plans), on an as-needed basis within the scope of Provider's licensing, training, experience, and qualifications and consistent with accepted standards of medical practice and the terms and conditions of this Agreement and any other applicable contract or similar arrangement.
- (b) Provide Covered Services to the members or beneficiaries of any Other Payor, pursuant to each applicable agreement between PacificSource and any Other Payor, and pursuant to and in accordance with the provisions of this Agreement.
- (c) To the extent Provider is a licensed facility, provide those inpatient, outpatient, and Emergency Medical Services for which it is licensed and which are Covered Services on an as-needed basis within the scope of Facility's licensing, training, experience, and qualifications, and consistent with accepted standards of medical practice and the terms and conditions of this Agreement. Facility shall not be required to provide any Covered Services to Members that Facility does not customarily and routinely offer to other patients. Facility has the right to refuse to treat disruptive, disorderly, or dangerous Members according to the same standards and policies applied to its other patients.
- (d) Devote sufficient time, attention, and energy necessary for the competent and effective performance of Provider's duties under this Agreement to Members who select Provider or are otherwise designated, assigned, or referred to Provider by PacificSource.
- (e) Meet standards for timely access to care and services as specified in the CCO Contract and, when not specified in the CCO Contract, Oregon Administrative Rules, including 410-141-3220 and 410-141-3160.
- (f) Meet the National Culturally and Linguistically Appropriate Services Standards (including mandatory training) established by the U.S. Department of Health and Human Services by providing effective, equitable, understandable, and respectful quality care and services that are responsive to diverse cultural health beliefs and practices, preferred languages, health literacy, and other communication needs.
- (g) Ensure that its facilities under contract, if any, can meet cultural responsiveness

and linguistic appropriateness standards in addressing the needs of adolescents, parents with dependent children, pregnant women, IV drug users, and Members with medication assisted therapy needs.

- (h) Communicate and coordinate care with the Patient-Centered Primary Care Home utilized by Members, if any, in a timely manner using electronic health information technology to the maximum extent feasible.
- (i) Work with PacificSource to further access to and coordination with social and support services, including culturally specific community-based organizations, community based mental health services, DHS Medicaid-funded long term care services, and mental health crisis management services.
- (j) Not seek payment from either PacificSource or Member for costs resulting from a Provider-Preventable Condition, as that term is defined in 42 CFR 447.26(b). Provider shall identify Provider-Preventable Conditions related to a Member to PacificSource and comply with all reporting requirements that OHA or PacificSource may require.
- (k) Collaborate with PacificSource, the CCO's Community Advisory Council, and other stakeholders in completing a Community Health Assessment and Community Health Improvement Plan and in carrying out activities to implement the Community Health Improvement Plan.
- (l) Participate in data submission activities pertinent to CCO quality improvement or incentive programs, complete patient experience surveys and share results with entities participating in the CCO, and participate in sharing of quality and performance data with entities participating in the CCO.

2.2 Personnel. If Provider is a licensed facility, then Provider shall devote sufficient time, attention, and energy necessary for the competent and effective performance of Provider's duties under this Agreement to Members who select Provider or are otherwise designated, assigned, or referred to Provider by PacificSource. Provider will provide sufficient licensed and experienced personnel, will supervise their professional medical services, and will provide health care services at all agreed upon times and days to meet the needs of Members. All non-physician personnel reasonably required for the proper operation of Provider, including but not limited to licensed and non-licensed health care personnel and administrative personnel, shall be employed by or under contract with Provider. Provider shall be responsible for all compensation, benefits, and costs in connection with such personnel and be responsible in all respects resulting from the employment of or contracting with such personnel. Decisions with respect to hiring control, direction, and termination of such personnel shall be the sole responsibility of Provider.

2.3 Non-Discrimination. Providers shall not discriminate between Members and non-Members as it relates to benefits and services to which they are both entitled and shall ensure that Provider offers hours of operation to Members that are no less than those offered to non-Members as provided in OAR 410-141-3220.

Provider shall not discriminate in the treatment of Members based upon physical or medical disability, medical condition, race, color, national origin, ancestry, religion, sex, marital status, veteran status, sexual orientation, or age, to the extent prohibited by

applicable federal, state, and local laws, regulations, and ordinances, and Provider shall provide services to Members in the same manner, in accordance with the same standards, and within the same availability as to non-Members.

2.4 Pre-authorization Program. Except for Emergency Medical Services, Provider will cooperate fully with PacificSource's pre-authorization program. PacificSource will notify Provider reasonably in advance when Covered Services are added to or removed from the pre-authorization program. Prior approval of all procedures or services listed on the pre-authorization grid is required, and any claims submitted for such procedures without prior approval will be denied. The pre-authorization grid is provided on-line on PacificSource's website in the provider section.

2.5 Referrals. Except (a) in the event of an emergency, (b) where otherwise approved or directed in advance by PacificSource, or (c) where a Member's medical needs otherwise require, Providers shall refer Members only to PacificSource Providers and shall refer Members for hospital services only to PacificSource Provider hospitals. Provider shall comply with PacificSource's referral authorization procedures as set forth in the PacificSource Provider Manual.

2.6 Emergency Coverage. Provider shall be responsible for responding to or making arrangements for emergent needs of Members with respect to Covered Services twenty-four (24) hours per day, seven (7) days per week, including holidays. In the event that Provider is unable to provide required Covered Services, Provider shall arrange for a Covering Practitioner.

2.7 Billing Procedure

2.7.1 Covered Services; Hold Harmless. For all Covered Services provided by Provider under this Agreement, Providers shall bill and submit encounter data to PacificSource in accordance with OAR 410-141-0420 and the PacificSource Provider Manual of this Agreement. Provider shall agree that never, under any circumstances, including, but not limited to, non-payment by PacificSource, insolvency of PacificSource, or the breach, expiration or termination of this Agreement, will Provider bill, charge, collect a deposit from, seek compensation, remuneration or reimbursement from, or have any recourse against OHA, Members, or persons acting on Members' behalf, for Covered Services and shall regard payment by PacificSource as payment in full for all benefits covered by this Agreement, with the exception of Copayments specifically authorized in a Member's Health Benefit Plan. The obligations of this Section shall survive the termination of this Agreement regardless of the cause giving rise to termination. In addition, Provider shall not bill in any amount greater than would be owed if Provider provided the services directly, consistent with 42 CFR 438.106 and 42 CFR 438.230.

2.7.2 Non-Covered Services. For all Non-Covered Services provided to any Member, Provider may bill Member directly for Non-Covered Services if, prior to providing Non-Covered Services, Provider shall have advised Member of non-coverage and shall obtain Member's acknowledgment and acceptance of individual financial responsibility ("Agreement to Pay"). Such Agreement to Pay shall be obtained in writing in a form published by OHA in accordance with OAR 410-141-3420.

2.7.3 Actions to Collect Amounts Owed. Provider shall not maintain any action at law or equity against OHA or any Member to collect any sum owed to Provider by PacificSource for Covered Services rendered pursuant to this Agreement. Provider shall not pursue legal or other remedy against PacificSource for nonpayment or underpayment to Provider for Covered Services provided to a Member unless and to the extent that PacificSource has failed to pay Provider for such Covered Services as required by this Agreement and Provider has exhausted any appeal rights or PacificSource becomes insolvent.

2.7.4 Claims Policies and Procedures. Provider agrees to comply with claims policies and procedures as identified in the PacificSource Provider Manual, which shall be consistent with industry standards for billing and coding practices. Provider agrees that claims must be submitted within four (4) months of the provision of services, except under the following circumstances: (a) billing is delayed due to eligibility issues; (b) pregnancy of the Member; (c) Medicare is the primary payer; (d) cases involving third party resources; (e) Covered Services provided by non-participating providers that are enrolled with OHA; or (f) other circumstances in which there are reasonable grounds for delay, as determined by PacificSource. Claims submitted after the applicable time period as specified in this Section will be denied, and Provider shall not seek reimbursement for such denied claims from Members. Provider agrees to abide by OHA's Provider-Preventable Conditions rules and requirements regarding non-payment of claims by PacificSource should preventable conditions occur.

2.7.5 Bill Review. Provider agrees to cooperate with any requests by PacificSource, or its agent, to review any bills submitted by Provider to determine whether a bill submitted for services rendered to a Member is a Covered Service under the Member's Health Benefit Plan, subject to this Agreement, properly billed to the services provided (as reflected in the medical record), and that payments made to the Provider were accurate, in accordance with the terms and conditions set forth herein.

2.8 Compliance with PacificSource Policies and Procedures. Provider shall participate in, cooperate with, and comply with all applicable PacificSource requirements, policies, and procedures, those set forth in the PacificSource Provider Manual (information can be found at <https://pacificsource.com/providers/>) and those relating to Member grievances; credentialing; utilization review; quality assurance; information and document requests; requesting hospital admission or specialty services; medical records sharing for specialty treatments, at the time of hospital admission or discharge, and for after-hospital follow-up appointments; and medical management program(s).. Provider acknowledges that such PacificSource requirements and procedures may be amended from time to time. Provider acknowledges receiving, or having access to PacificSource's policies regarding Grievance, Notice of Adverse Benefit Determination, Appeals, and Contested Case Hearings, and access to the PacificSource Provider Manual.

2.9 Cooperation with UM and Quality Improvement Activities; PacificSource Committee and Corrective Action Plans. Provider agrees to cooperate with utilization management and quality management procedures specified by the OHA, including OHPB Policy #31, or enacted by PacificSource and communicated to Provider by PacificSource. If PacificSource's

quality review activities involve post-payment record reviews or audits, such activities shall be limited to Member records and shall be conducted at PacificSource's expense, not including the cost of accessing and/or copying records. Provider shall provide at no cost, up to 10 records per Provider per audit, after which the parties shall split the reasonable costs. Provider agrees to PacificSource's audit schedule, and PacificSource shall not unreasonably interfere with Provider's business operations for the purpose of such audit. Provider shall cooperate with PacificSource, or its designee, in the performance of quality improvement and related activities. Failure to comply with PacificSource utilization review requirements or respond to post-payment record reviews or audits may result in a PacificSource request for a return of monies paid to Provider. If such amounts are not refunded or a reasonable accommodation for repayment cannot be reached between PacificSource and Provider, PacificSource may setoff such monies against amounts owed to Provider. The setoff right provided above may only be exercised upon prior written notice to Provider. For any return requests or setoff notices, Provider shall be given an opportunity to be heard by PacificSource.

2.9.1 Quality Improvement Programs. Provider will participate and/or promote applicable quality improvement programs, which are designed to improve the quality of care, quality of service, and the Member's experience. Such programs may include initiatives designed or required by regulatory or accreditation entities and may include without limitation data sharing via access to Provider's electronic health records, collection and evaluation of health data, providing access to supplemental data for collection of health data, providing applicable contact information to facilitate medical record chart chases, responding to Member complaints and quality of care concerns, responding to program evaluations and satisfaction surveys, and allowing PacificSource to use Provider performance data for quality improvement activities. Provider will also participate in CCO incentive measures which include data sharing via access to Provider electronic health records, participation in PacificSource incentive and improvement programs, and other measures or metrics as applicable.

2.9.2 Corrective Action Plans. PacificSource may determine that Provider's performance of obligations, duties, and responsibilities under the terms of this Agreement is deficient. In reaching that conclusion, PacificSource may, consider third-party audit or other formal review results, peer review results, quality measures, written or oral feedback from Members or patients, and any other issues which may be identified by PacificSource. If PacificSource determines Provider's performance is deficient for any reason, but that such deficiency does not constitute a Material Breach of the terms of this Agreement, PacificSource may declare the need for corrective action and issue to Provider or request from Provider a corrective action plan ("CAP") subject to internal review and approval. Provider shall have thirty (30) days to resolve the CAP to PacificSource's satisfaction, or within a reasonable timeframe set by OHA. Failure to resolve the CAP shall constitute a Material Breach by Provider, and PacificSource may terminate this Agreement immediately or take other action including financial penalties, imposition of liquidated damages, or sanctions, which Provider has the right to contest.

2.10 Provider Practice. Subject to the terms and conditions of this Agreement, Provider shall be entitled to perform all usual and customary procedures relative to their practice. This Agreement does not, and shall not be interpreted as, prohibiting or otherwise restricting Provider who is acting within the lawful scope of practice from advising or advocating on behalf of Members who are patients of such Provider, for the following:

- (a) Members' health status, medical care, or treatment options including any alternative treatment that may be self-administered, that is Medically Appropriate even if such care or treatment is not covered under this Agreement or is subject to copayment;
- (b) Any information Members need in order to decide among relevant treatment options;
- (c) The risks, benefits, and consequences of treatment or non-treatment; and
- (d) Members' right to participate in decisions regarding their health care, including the right to refuse treatment, and to express preferences about future treatment decisions.

2.11 Professional Representations. Throughout the term of this Agreement, Provider represents and warrants that it shall comply with all of the following regards any licensed practitioners or Provider Entity covered under this Agreement:

- (a) Maintain an unrestricted current license to practice his or her specialty under the State jurisdiction in which Covered Services are provided and have in effect at all times all licenses required by law for the practice of such provider's profession;
- (b) Maintain credentialing according to NCQA credentialing standards either by PacificSource or PacificSource's agent;
- (c) Secure and maintain, at Provider's expense, throughout the term of this Agreement, professional liability insurance in a minimum amount not less than or as required by state law or OHA;
- (d) Obtain and maintain staff privileges at the hospital primarily used by PacificSource Providers, assuming privileges are available and appropriate to that class of provider;
- (e) Warrant that this Agreement has been executed by its duly authorized representative and that executing this Agreement and performing its obligations hereunder shall not cause Provider to violate any term or covenant of any other agreement or arrangement now existing or hereinafter executed; and
- (f) Notify PacificSource promptly of any (i) modification, restriction, suspension, or revocation of any provider's authorization to prescribe or to administer controlled substances; (ii) imposition of sanctions against Provider under Medicaid, Medicare, or any other governmental program; or (iii) other professional disciplinary action or criminal or professional liability action of any kind against any provider, which is either initiated, in progress, or completed as of the Effective Date of this Agreement and at all times during the term of this Agreement

2.12 Facility Representations. If a facility, then throughout the term of this Agreement, Provider represents and warrants that Provider shall comply with all of the following regards all licensed facilities covered under this Agreement:

- (a) Maintain all appropriate license(s) and certification(s) mandated by governmental regulatory agencies;
- (b) Maintain accreditation by the Joint Commission on Accreditation of Healthcare Organizations ("Joint Commission") or another applicable accrediting agency recognized by PacificSource;
- (c) Maintain compliance with all applicable federal and state laws and regulations related to this Agreement and the services to be provided hereunder, including, without limitation, statutes and regulations related to fraud, abuse, discrimination, disabilities, confidentiality, false claims, and prohibition of kickbacks;
- (d) Establish and maintain an ongoing quality assurance/assessment program which includes, but is not limited to, appropriate credentialing of employees and subcontractors and shall supply to PacificSource the relevant documentation, including, but not limited to, internal quality assurance/assessment protocols, state licenses and certifications, federal agency certifications, and/or registrations upon request;
- (e) Ensure that all ancillary health care personnel employed by, associated or contracted with Facility who treat Members are and will remain throughout the term of this Agreement appropriately licensed and/or certified as required by state law and supervised, and qualified by education, training and experience to perform their professional duties; and will act within the scope of their licensure or certification, as the case may be;
- (f) Maintain credentialing, privileging, and re-appointment procedures in accordance with its medical staffs by-laws, regulations, and policies, if any; meet the querying and reporting requirements of the National Practitioner Data Bank and Healthcare Integrity and Protection Data Bank ("HIPDB"); and fulfill all applicable state and Federal standards;
- (g) Warrant that this Agreement has been executed by its duly authorized representative and that executing this Agreement and performing its obligations hereunder shall not cause Provider to violate any term or covenant of any other agreement or arrangement now existing or hereinafter executed; and
- (h) Notify PacificSource promptly of any (i) modification, restriction, suspension, or revocation of Provider's license(s) and/or certification(s); (ii) imposition of sanctions against Provider under the Medicaid program, Medicare program, or any other governmental program; or (iii) other disciplinary action, or criminal or professional liability action of any kind against Provider, which is either initiated, in progress, or completed as of the Effective Date of this Agreement and at all times during the term of this Agreement.

2.13 Credentialing. Provider and practitioners covered under this Agreement agree to comply with credentialing requirements of PacificSource as outlined in the PacificSource Provider

Manual and prior to rendering of Covered Services to Members. Provider warrants that it and any practitioner affiliated with Provider meets PacificSource's credentialing standards and that Provider has all licenses, permits, and/or governmental or board authorizations or approvals necessary to provide Covered Services in accordance with the applicable requirements in the state(s) in which Provider conducts business. Provider will provide immediate written notice to PacificSource of any changes in the licenses, permits, and/or governmental or board authorizations or approvals referenced above.

2.14 Provider Information. Provider shall notify PacificSource of any change in Provider information, including but not limited to, address, phone number, tax identification number, open and closed practice status, board certification and hospital privileges in advance of said change. Provider hereby authorizes any and all hospitals that Provider maintains staff privileges at to notify PacificSource promptly following the initiation of any disciplinary or other action of any kind that could result in any suspension, termination, or restriction in any material way, which would affect the ability of Provider to provide Covered Services to Members.

2.15 Coordination of Benefits. Provider agrees to (a) cooperate in providing for effective implementation of the provisions of all Health Benefit Plans and PacificSource policies relating to coordination of benefits and (b) comply with coordination of benefits policies described in the PacificSource Provider Manual. Provider shall inform PacificSource and OHA if Provider learns that a Member has insurance or health care benefits available from other sources or if a Member's condition is the result of other party liability. Provider will cooperate with PacificSource in pursuing claims against such other payors. In the event of illness or injury for which a third party has accepted financial responsibility or has been judged to be liable, the amount available for collection by Provider from the third party shall be applied to charges for medical care of the Member prior to the resources of PacificSource.

If the third party has reimbursed Provider, or if a Member reimbursed Provider after receiving payment from the third party, then Provider must reimburse Medicare up to the full amount Provider received, if the Member has Medicare and if Medicare is unable to recover its payment from the remainder of the third party payment. If the third party is not liable for the illness or injury of a Member or if recovery from the third party is less than PacificSource's obligation to the Member in the absence of payment by a third party, Provider shall comply with PacificSource's rules governing the provision of Covered Services and the terms of this Agreement in order for PacificSource to accept financial responsibility. Notwithstanding the foregoing, Provider may not refuse to provide Covered Services to a Member because of a potential third party liability, but shall provide Covered Services and cooperate with PacificSource for possible recoupment of funds.

2.16 PacificSource Provider Directory. Provider hereby authorizes PacificSource to list Provider's name, specialty, address, and telephone number in PacificSource's Provider Directory, whether on-line or in print, and in any PacificSource materials to help promote PacificSource or Health Benefit Plans to Members.

2.17 Provider Entities. If Provider is a Provider Entity, Provider shall provide services under this Agreement solely through its individual practitioner shareholders, partners, independent contractors, and/or employees and must ensure that all such shareholders, partners, independent contractors, and/or employees comply with the terms of this Agreement.

- 2.18 Confidentiality.** During and after the term of this Agreement, Provider shall keep confidential any financial, operating, proprietary, or business information relating to PacificSource that is not otherwise public or reasonably identified as confidential, including but not limited to, the terms of this Agreement. The obligations of this Section shall survive the termination of this Agreement.
- 2.19 Non-Solicitation.** Provider shall not directly or indirectly engage in Disparagement, as defined below, of PacificSource to any Member without PacificSource's prior written consent. For the purposes of this Section, "Disparagement" shall mean any oral or written statement that is slanderous, defamatory, or intentionally inaccurate, regarding PacificSource that may be reasonably interpreted to be intended to persuade any Member or employer of such Member to disenroll from a Health Benefit Plan or to encourage any Member or employer of such Member to receive health care from Provider other than pursuant to this Agreement. Nothing in this section is intended to interfere with an Provider's ability to communicate with a Member about the Member's medical condition, proposed treatment, or treatment alternatives whether covered by Health Benefit Plan or not and is consistent with state or federal laws. In addition to any other remedy available at law or in equity, Provider's breach of this Section shall be grounds for termination, pursuant to Section 4.5 (Termination with Cause upon Notice) of this Agreement, from participation in PacificSource's panel of PacificSource Providers and from participation in providing Covered Services to Members in accordance with the terms and conditions of this Agreement.
- 2.20 Eligibility Verification.** Providers will use best efforts to verify the enrollment and assignment of a Member prior to the provision of Covered Services and acknowledge that failure to verify eligibility may result in denial of claims for said Covered Services. PacificSource will use best efforts to provide such enrollment verification information and PacificSource acknowledges that its eligibility verification policies will be consistent with state and/or federal legal requirements.
- 2.21 Pricing and Quality Transparency.** To the extent required by Oregon law, Provider shall promptly provide pricing and quality information to PacificSource as and when requested for the purpose of providing cost estimates to Members.
- 2.22 Emergency Room Referrals.** Providers shall (a) not refer or direct Members to hospital emergency rooms for non-Emergency Medical Conditions and (b) educate and instruct Members in the proper utilization of Provider's office in lieu of the hospital emergency room.
- 2.23 Subrogation.** As required by PacificSource's contract with OHA, Provider agrees to subrogate to OHA any and all claims Provider has or may have against manufacturers, wholesale or retail suppliers, sales representatives, testing laboratories, or other providers in the design, manufacture, marketing, pricing, or quality of drugs, pharmaceuticals, medical supplies, medical devices, DMEPOS, or other products.
- 2.24 Electronic Medical Record Access.** Provider agrees to allow PacificSource, upon request, access to its electronic medical record system for the retrieval and review of Member medical records. Such access will be granted on a continuous basis for the duration of this

Agreement and PacificSource will agree to reasonable restrictions and rules related to such access.

- 2.25 Representations and Warranties.** Provider represents and warrants that (a) it has the power and authority to enter into and perform this Agreement, (b) this Agreement, when executed and delivered, shall be a valid and binding obligation of Provider enforceable in accordance with its terms, (c) Provider has the skill and knowledge possessed by well-informed members of its industry, trade or profession and Provider will apply that skill and knowledge with care and diligence to perform the services contemplated herein in a professional manner and in accordance with standards prevalent in Provider's industry, trade or profession, and (d) Provider shall, at all times during the term of this Agreement, be qualified, professionally competent, and duly licensed to perform the services contemplated herein.

3.0 PACIFICSOURCE RESPONSIBILITIES

- 3.1 Payment.** Provider shall be compensated for Covered Services provided to Members in accordance with Attachment A. Unless a claim is disputed, PacificSource shall approve for payment Provider's complete, accurate, and timely submitted Clean Claims for Covered Services rendered to a Member, in accordance with PacificSource policies or applicable laws or regulations. The timing and calculation of payment(s) to Provider for Covered Services shall be according to PacificSource's payment methodology as set forth in this Agreement and Attachment(s).
- 3.2 Refunds.** PacificSource may initiate refunds from Providers for up to one (1) year from the date of payment. Refund statements are generated on a monthly basis, and PacificSource will setoff consistent with Section 2.9 (Cooperation with UM Quality Improvement Activities; PacificSource Committee and Corrective Action Plans). In the event that HSD retroactively disenrolls a Member, PacificSource reserves the right to initiate provider refunds for any applicable time period, which may be longer than one (1) year from the date of payment.
- 3.3 Member Eligibility.** PacificSource shall establish a method for Provider to identify whether a person requesting services is enrolled with PacificSource and eligible to receive Covered Services paid for by PacificSource.
- 3.4 Subcontracts.** PacificSource may subcontract any or all of the services PacificSource agrees to provide under this Agreement. No subcontract shall terminate or limit PacificSource's legal responsibility for the timely and effective performance of its duties and responsibilities under this Agreement.
- 3.5 Marketing.** PacificSource may advertise the participation of Provider with PacificSource in print, voice, and video advertising media. PacificSource may list the name, address, telephone number, and other identifying information of Provider in PacificSource's publications furnished to Providers and Members and may identify Provider as a PacificSource Provider in advertising and marketing materials, in accordance with OHA guidelines.

3.6 Choice of Health Care Provider. PacificSource will allow Member to choose his or her health care provider to the extent possible and appropriate.

4.0 EFFECTIVE DATE; TERM AND TERMINATION.

4.1 Term and Renewal. The term of this Agreement shall begin on the Effective Date and shall continue for an initial term of one (1) year and renew for two (2) terms thereafter..

4.2 Termination without Cause. Either party may terminate this Agreement at any time upon at least one hundred eighty (180) days prior written notice to the other party.

4.3 Immediate Termination. PacificSource shall have the right to terminate this Agreement immediately by written notice to Provider upon the occurrence of any of the following events:

- (a) Provider's license to provide medical services in the state in which services were rendered, as applicable, or authorization to administer controlled substances is terminated, suspended, or restricted in any material way, which would affect the ability of Provider to furnish Covered Services to Members pursuant to the terms of this Agreement;
- (b) Provider's medical staff privileges at any licensed general acute care hospital is suspended, terminated, or restricted in any material way, which would affect Provider's ability to provide Covered Services to Members;
- (c) Provider is suspended from participation in Medicaid or Medicare programs or not enrolled as a Medicaid Provider with the State of Oregon;
- (d) Provider's loss of professional liability coverage as required by this Agreement;
- (e) Provider's death or incapacity. PacificSource reserves the right to determine whether Provider is incapacitated for the purposes of this Section;
- (f) PacificSource makes a reasonable and good faith determination that such termination is necessary to protect the health or welfare of Members; or
- (g) If Provider is a Provider Entity, Provider (i) ceases to be a professional corporation, medical group partnership, or other health care provider organization in good standing under the laws of the state in which Services were rendered, as applicable, or (ii) there is a change in the majority ownership or control of Provider; or (iii) Provider violates the drug-free workplace provisions in this Agreement.

To protect the interests of Members, Provider will provide immediate notice to PacificSource of any of the aforesaid events. PacificSource shall provide Provider an opportunity to respond to PacificSource's termination decision if the basis for PacificSource's termination decision is based upon mistaken or otherwise erroneous information, and shall otherwise follow any legal requirements that apply.

4.4 Immediate Termination of Licensed Facility. For any licensed facilities covered under this Agreement, PacificSource shall have the right to terminate this Agreement immediately by written notice to Provider upon the occurrence of any of the following events:

- (a) Withdrawal, expiration, or non-renewal of any Federal, state, or local license, certificate, approval or authorization of Provider;
- (b) Bankruptcy or receivership of Provider, or an assignment by Provider for the benefit of creditors;
- (c) Loss or material limitation of Provider's insurance;
- (d) Debarment or suspension of Provider from participation in any governmental sponsored program, including, but not limited to Medicare;
- (e) Failure to comply with the notification requirements set forth in this Agreement, including those in Section 2.11 and 2.12;
- (f) Revocation or suspension of Provider's accreditation as required in this Agreement;
- (g) The listing of Provider in the HIPDB; or
- (h) Change of control of Provider to an entity not acceptable to PacificSource, or there is a change in the majority ownership or control of Provider.

To protect the interests of Members, Provider will provide immediate notice to PacificSource of any of the aforesaid events. PacificSource shall provide Provider an opportunity to respond to PacificSource's termination decision if the basis for PacificSource's termination decision is based upon mistaken or otherwise erroneous information, and shall otherwise follow any legal requirements that apply.

4.5 Termination with Cause upon Notice. PacificSource may terminate a Provider for cause, including, without limitation, quality of care, fraud, waste or abuse concerns, from participation in PacificSource's panel of PacificSource Providers and in the provision of Covered Services to Members pursuant to the terms and conditions of this Agreement. For cause shall not include a Provider advocating a decision, policy, or practice solely for reason of such advocacy. In the event of a termination for cause, Provider is entitled to those rights of appeal as described in PacificSource's Appeal Process for Terminated Providers Policy.

4.6 Rights and Obligations upon Termination.

- (a) Continuation of Obligations. Upon termination, all rights and obligations of the parties under this Agreement shall immediately cease, except those rights and obligations that are identified as surviving the term of this Agreement. Termination of this Agreement shall not relieve either party of any obligation to the other party in accordance with the terms of this Agreement, and with respect to services furnished prior to such termination, and shall not relieve Provider of Provider's obligation to cooperate with PacificSource in arranging for the transfer of care of Members receiving treatment from Provider.

- (b) Continuation of Services. If required by a Health Benefit Plan, and unless PacificSource makes provision for the assumption of such services by another practitioner, following termination of this Agreement, Provider shall continue to furnish, and PacificSource shall continue to pay for, in accordance with the terms of this Agreement, Covered Services rendered to Members under the care of Provider at the time of termination until the services being rendered are completed. PacificSource shall use its best efforts to arrange for any Members under the care of Provider at the time of termination of the Agreement to be transferred to another PacificSource Provider at the earliest possible date. In the event of termination of this Agreement, Provider shall cooperate with and not interfere in the transfer of Members under the care of Provider at the time of termination until the services being rendered are completed.
- (c) Access to Records Upon Termination. Notwithstanding any termination of this Agreement, Provider shall continue to provide PacificSource access to Provider's records, so as to allow PacificSource to continue to meet its obligations under the CCO Contract.

5.0 OREGON HEALTH PLAN PROVISIONS

- 5.1 **Accountability.** Provider acknowledges that PacificSource oversees and is ultimately accountable to OHA for the timely and effective performance of PacificSource's duties and responsibilities under PacificSource's contract with the State of Oregon, acting by and through OHA.
- 5.2 **Continuation of Services.** In the event of insolvency or cessation of operations of PacificSource, Provider shall continue to provide Covered Services to Members for the period in which PacificSource continues to receive compensation for administering services under the Oregon Health Plan.
- 5.3 **Incorporation of Provisions.** To the extent that any provision of PacificSource's CCO Contract to implement and administer services under the Oregon Health Plan applies to Provider with respect to the services contemplated hereunder, such provision shall be incorporated by this reference into this Agreement and shall apply equally to Provider.

6.0 GENERAL PROVISIONS.

- 6.1 **Reimbursement; Value-Based Payments.** The parties recognize that the CCO Contract requires transition to value-based payments and agree to use best efforts to work together to establish and implement value-based benefits in a manner that allows PacificSource to fulfill the requirements of the CCO Contract by or before January 1, 2020, including performance measures determined by OHA or in discussions with OHA. Further, the parties agree to use best efforts to continue to work together to expand value-based payments beyond January 1, 2020, again to allow PacificSource to fulfill the requirements of the CCO Contract and value-based payment requirements.
- 6.2 **Non-Exclusivity.** This Agreement is not exclusive, and nothing herein shall preclude either party from contracting with any other person or entity. PacificSource makes no representation or guarantee as to the number of Members who may select Provider for the purpose of receiving Covered Services.

- 6.3 No Third Party Beneficiaries.** Neither Members nor any other third parties are intended by the parties to this Agreement to be third party beneficiaries under this Agreement, and no action may be brought to enforce the terms of this Agreement against either party by any person who is not a party to this Agreement.
- 6.4 Indemnification.** At all times during the term of this Agreement, Provider shall indemnify, defend, and hold PacificSource and PacificSource's employees and agents harmless from and against any and all claims, damages, causes of action, costs, or expenses, including reasonable attorneys' fees, to the extent proximately caused by the gross negligence or willful misconduct of Provider or any employee or agent of Provider's arising out of this Agreement. At all times during the term of this Agreement, PacificSource shall indemnify, defend, and hold Provider and Provider's employees and agents harmless from and against any and all claims, damages, causes of action, costs or expenses, including reasonable attorneys' fees, to the extent proximately caused by the gross negligence or willful misconduct of PacificSource or any PacificSource employee or agent arising from this Agreement. Notwithstanding the foregoing, this Section shall be null and void to the extent that it is interpreted to reduce insurance coverage to which either party is otherwise entitled, by way of any exclusion for contractually assumed liability or otherwise.
- 6.5 Dispute Resolution.** Notwithstanding any other provision in this Agreement, and unless otherwise required by federal law, the parties agree to resolve disputes related to the termination or non-renewal of this Agreement in the manner set forth in OAR 410-141-3269, as that regulation now exists or is amended.
- 6.6 Assignment.** Neither party may assign or transfer its rights or obligations under this Agreement without the prior written consent of the other; provided, however, that PacificSource may assign this Agreement, upon thirty (30) days prior written notice, to any entity that controls, is controlled by, or that is under common control with PacificSource now or in the future, or which succeeds to its business through a sale, merger, or other corporate transaction without the prior consent of Provider. Any purported assignment or transfer in violation of this Section 6.6 shall be null and void.
- 6.7 Amendments.** PacificSource may amend this Agreement by providing prior written notice to Provider. Failure of Provider to object in writing to any such proposed amendment within thirty (30) days following receipt of notice shall constitute Provider's acceptance thereof. Any amendment to this Agreement or Exhibits necessary for compliance with state or federal law or regulation shall become effective upon notice from PacificSource to Provider if required by federal or state law. In the event Provider objects to such amendment necessary for compliance with state or federal law, PacificSource may, at its sole option, either continue this Agreement unamended or terminate this Agreement sixty (60) days from the date of receipt of written objection from Provider. During said sixty (60) day period, the terms and conditions of this Agreement as existed on the day prior to the date of the written objection, including all terms and conditions of compensation, shall continue to be in effect. If amendment is to comply with state or federal law, termination of this Agreement under this provision shall be treated as a "voluntary termination" without right to hearing. Notwithstanding the foregoing, this Agreement may be amended at any time by mutual written agreement signed by both parties.
- 6.8 Headings.** The headings of the various sections of this Agreement are merely for

convenience and do not, expressly or by implication, limit, define, or extend the terms of the sections to which they apply.

- 6.9 Notices.** Any notice required to be given pursuant to the terms of this Agreement shall be in writing and shall be either hand delivered, confirmed via facsimile, sent via overnight mail (such as Federal Express), or sent postage prepaid, by certified mail, return receipt requested, to PacificSource or Provider at the address set forth on the signature page of this Agreement. Such address may be changed by giving notice of such change in the manner provided in this Section for giving of such notice. The notice shall be effective on the date of delivery if delivered by hand or confirmed via facsimile, the date of delivery as indicated on the receipt if sent via overnight mail, or the earlier of the date indicated on the return receipt or four (4) business days after mailing if sent by certified mail.
- 6.10 Severability; Conformity with Law.** If any provision of this Agreement is declared invalid or otherwise unenforceable, the enforceability of the remaining provisions shall be unimpaired, and the parties shall replace the invalid or unenforceable provision with a valid and enforceable provision that reflects the original intention of the parties as nearly as possible in accordance with applicable law. This Agreement shall be interpreted and, if necessary, amended to confirm with applicable federal and state law in effect on or after its Effective Date.
- 6.11 Waiver of Breach.** The waiver of any breach of this Agreement by either party shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or any other provision of this Agreement.
- 6.12 Modification of Health Benefit Plan.** PacificSource may change, revise, modify, or alter the form or content of any Health Benefit Plan or Member written materials without prior approval or notice to Provider.
- 6.13 Conflict with Health Benefit Plan; Outside Contracts.** This Agreement does not modify the benefits, terms, or conditions contained in a Member's Health Benefit Plan. In the event of a conflict between this Agreement and the terms of the Member's Health Benefit Plan, the terms of the Member's Health Benefit Plan shall control. PacificSource does not and shall not prohibit a Member from contracting for services outside the Member's Health Benefit Plan; however, PacificSource does not consent to, or agree to be bound by, any terms or conditions that may be offered to, or entered into by, any Member contracting outside of their Health Benefit Plan
- 6.14 Conflict with PacificSource Provider Manual.** In the event the terms and conditions of this Agreement conflict with the terms and conditions of the PacificSource Provider Manual, the terms and conditions of this Agreement shall control.
- 6.15 Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of Oregon.
- 6.16 Entire Agreement.** This Agreement and any and all recitals, amendments, exhibits, attachments, schedules, and addenda in addition to the PacificSource's Policies and procedures contained in the PacificSource Provider Manual contain the entire agreement of the parties, and supersede any other agreement between the parties for Medicaid.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the date first set forth above.

PACIFICSOURCE:

PacificSource Community Solutions

By: _____

Name: Peter McGarry _____

Title: VP Provider Network _____

Date: _____

PROVIDER:

County of Clackamas, Oregon, signing on behalf of the Board Commissioners:

By: _____

Name: Richard Swift _____

Title: Director _____

Date: _____

Address:

PacificSource Community Solutions

PO Box 7469

Bend, OR 97708

Attn: Provider Contracting

Fax: 541-322-6434

Address:

County of Clackamas, Oregon

2051 Kaen Road

Oregon City, OR 97045

Fax: _____

Schedule of Attachments and Exhibits

- Attachment A Reimbursement Schedule
- Attachment B Scope of Work and Special Provisions – Provider Specific
- Attachment C Scope of Work and Special Provisions – All Providers
- Attachment D Credentialing
- Attachment E Oregon Health Plan (Oregon Health Authority) Contractual Requirements
- Exhibit 1 Required Federal Terms and Conditions

Attachment A

County of Clackamas, Oregon

April 1, 2020

**Reimbursement Schedule – Non-Risk
Physical Health -- Professional Provider**

These rates shall apply to all PacificSource Community Solutions Networks and Products

1.0 Fee For Service Reimbursement

SERVICE/PROCEDURE	MAXIMUM ALLOWABLE
All Medical Services: As defined in the OHP Medical-Dental Fee Schedule	^{1,2} 100% of current OHP Allowable Amounts
Anesthesia: Service or supply with an ASA value	^{1,2,3} 100% of current OHP Allowable Amounts
Laboratory, DME/supplies	^{1,2} 100% of current OHP Allowable Amounts
Drugs, Injectables, Vaccines, Immunizations:	^{1,2} 100% of current OHP Allowable Amounts
Services and Procedures without an established unit value	PacificSource Community Solutions Default Fee Allowance ⁴

NOTE: Payment will be based on the negotiated rates in effect at the time the services or supplies are rendered or provided as specified above. Payment shall be the lesser of Provider's billed charges or the Maximum Allowable amount.

1. PacificSource will reimburse based on the rates published as of the date of adjudication.
2. Updates to the schedules noted above shall be updated in accordance with the state of Oregon, OHA and HSD.
3. ASA Basic Unit Value and annual updates as defined by the American Society of Anesthesiologists Relative Value Guide. Time units shall be based on 15 minute increments.
4. PacificSource utilizes industry standard publications and rate methods to supplement codes not established by the above noted methodologies.

2.0 GENERAL PROVISIONS

2.1 Requirements

May 14, 2020

Board of County Commissioner
Clackamas County

Members of the Board:

Approval for an Intergovernmental Agreement with
Clackamas County Fire District #1 for Medical Direction

Purpose/Outcomes	This Agreement provides the basis for a cooperative working relationship for the provision of medical direction for Clackamas County Fire District #1
Dollar Amount and Fiscal Impact	Maximum contract value is \$7,350.
Funding Source	Emergency Medical Services Coordination – No General Funds are used.
Duration	Effective June 1, 2020 and terminates on December 31, 2020
Previous Board Action	No Previous Board Action
Strategic Plan Alignment	1. Improved community safety and health 2. Ensure safe, healthy and secure communities
Counsel Review	County Counsel has review and approved this document on April 16, 2020
Contact Person	Richard Swift, interim Public Health Director , 503-650-5694
Contract No.	9690

Background

The Clackamas County Public Health Division (CCPHD) of the Health, Housing & Human Services Department requests the approval of an Agreement with Clackamas County Fire District #1 for Medical Direction. This Agreement provides the basis for a cooperative working relationship with Clackamas County Fire District #1 for Medical Direction such as, developing a program to ensure they meet the state requirements and to establish performance standards. This agreement will ensure that Clackamas County Fire District #1 first responders meet requirements and protocols for the provision of EMS care.

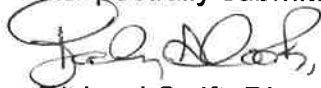
The maximum contract value is \$7,350. This agreement is effective June 1, 2020 and expires on December 31, 2020.

Page 2 Staff Report
May 14, 2020
Agreement #9690

RECOMMENDATION:

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

Respectfully submitted,

 John Black, H3S Deputy Director / FOR

Richard Swift, Director
Health, Housing, and Human Services

**INTERGOVERNMENTAL AGREEMENT
BETWEEN CLACKAMAS COUNTY
AND CLACKAMAS COUNTY FIRE DISTRICT #1**

Contract #9690

THIS AGREEMENT (this "Agreement") is entered into and between Clackamas County ("County"), a political subdivision of the State of Oregon, and Clackamas County Fire District #1 ("Agency"), an Oregon municipal corporation, collectively referred to as the "Parties" and each a "Party."

RECITALS

Oregon Revised Statutes Chapter 190.010 confers authority upon local governments to enter into agreements for the performance of any and all functions and activities that a party to the agreement, its officers or agencies have authority to perform.

Clackamas County Fire District #1 desires to contract with County to receive medical direction services for their Emergency Medical Program.

In consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

TERMS

1. **Term.** This Agreement shall be effective June 1, 2020, and shall expire upon the completion of each and every obligation of the Parties set forth herein, or December 31, 2020, whichever is sooner.
2. **Scope of Work.** The Agency agrees to provide the services further identified in the Scope of Work attached hereto as Exhibit A and incorporated herein ("Work").
3. **Consideration.** The Agency agrees to pay County a sum not to exceed Seven thousand- three hundred-fifty dollars (\$7,350) for accomplishing the Work required by this Agreement.
4. **Payment.** Agency agrees to pay County as stated in Exhibit A.
5. **Representations and Warranties.**
 - A. *Agency Representations and Warranties:* Agency represents and warrants to County that Agency has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of Agency enforceable in accordance with its terms.
 - B. *County Representations and Warranties:* County represents and warrants to Agency that County has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of County enforceable in accordance with its terms.
 - C. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.
6. **Termination.**
 - A. Either the County or the Agency may terminate this Agreement at any time upon thirty (30) days written notice to the other party.

- B. Either the County or the Agency may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination however, the Party seeking the termination shall give the other Party written notice of the breach and of the Party's intent to terminate. If the breaching Party has not entirely cured the breach within fifteen (15) days of deemed or actual receipt of the notice, then the Party giving notice may terminate the Agreement at any time thereafter by giving written notice of termination stating the effective date of the termination. If the default is of such a nature that it cannot be completely remedied within such fifteen (15) day period, this provision shall be complied with if the breaching Party begins correction of the default within the fifteen (15) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. The Party giving notice shall not be required to give more than one (1) notice for a similar default in any twelve (12) month period.
- C. The County or the Agency shall not be deemed to have waived any breach of this Agreement by the other Party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach is of the same nature as that waived.
- D. The Agency may terminate this Agreement in the event the Agency fails to receive expenditure authority sufficient to allow the Agency, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement, or if federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the Project under this Agreement is prohibited or the Agency is prohibited from paying for such work from the planned funding source.
- E. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

7. Indemnification.

- A. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the County agrees to indemnify, save harmless and defend the Agency, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the County or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the County has a right to control.

Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the Agency agrees to indemnify, save harmless and defend the County, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the Agency or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the Agency has a right to control.

8. **Insurance.** The Agency agrees to furnish the County with evidence of commercial general liability insurance with a combined single limit of not less than \$1,000,000 for each claim, incident, or occurrence, with an aggregate limit of \$2,000,000 for bodily injury and property damage for the protection of Clackamas County, and their officers, elected officials, agents, and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof, in any way related to this Agreement. If self-insured, Agency shall provide documentation to the County of Agency's self-insured status by completing the Self-Insurance Certification form provided by the County.

9. **Notices; Contacts.** Legal notice provided under this Agreement shall be delivered personally, by email or by certified mail to the individuals identified below. Any communication or notice so addressed and mailed shall be deemed to be given upon receipt. Any communication or notice sent by electronic mail to an address indicated herein is deemed to be received 2 hours after the time sent (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered. Any communication or notice by personal delivery shall be deemed to be given when actually delivered. Either Party may change the Party contact information, or the invoice or payment addresses by giving prior written notice thereof to the other Party at its then current notice address.

A. Philip Mason-Joyner or their designee will act as liaison for the County.

Contact Information:

2051 Kaen Road, Suite 367, Oregon City, OR 97045

(503) 742-5956

PMason@clackamas.us

Fred Charlton, Fire Chief, or their designee will act as liaison for the Agency.

Contact Information:

11300 SE Fuller Rd, Milwaukie, OR 97222

(503) 742-2600

fred.charlton@clackamasfire.com

10. General Provisions.

A. **Oregon Law and Forum.** This Agreement, and all rights, obligations, and disputes arising out of it will be governed by and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without giving effect to the conflict of law provisions thereof. Any claim between County and Agency that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas County for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court

- for the District of Oregon. In no event shall this section be construed as a waiver by the County of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. Agency, by execution of this Agreement, hereby consents to the in personam jurisdiction of the courts referenced in this section.
- B. Compliance with Applicable Law.** Both Parties shall comply with all applicable local, state and federal ordinances, statutes, laws and regulations. All provisions of law required to be a part of this Agreement, whether listed or otherwise, are hereby integrated and adopted herein. Failure to comply with such obligations is a material breach of this Agreement.
- C. Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.
- D. Access to Records.** Agency shall retain, maintain, and keep accessible all records relevant to this Agreement (“Records”) for a minimum of six (6) years, following Agreement termination or full performance or any longer period as may be required by applicable law, or until the conclusion of an audit, controversy or litigation arising out of or related to this Agreement, whichever is later. Agency shall maintain all financial records in accordance with generally accepted accounting principles. All other Records shall be maintained to the extent necessary to clearly reflect actions taken. During this record retention period, Agency shall permit the County’s authorized representatives’ access to the Records at reasonable times and places for purposes of examining and copying.
- E. Work Product.** All work performed under this Agreement shall be considered work made for hire and shall be the sole and exclusive property of the District. The District shall own any and all data, documents, plans, copyrights, specifications, working papers and any other materials produced in connection with this Agreement. On completion or termination of the Agreement, the Agency shall promptly deliver these materials to the District’s Project Manager.
- F. Hazard Communication.** Contractor shall notify County prior to using products containing hazardous chemicals to which County employees may be exposed, which includes any hazardous, toxic, or dangerous substance, waste, or material that is the subject of environmental protection legal requirements or that becomes regulated under any applicable local, state or federal law, including but not limited to the items listed in the United States Department of Transportation Hazardous Materials Table (49 CFR §172.101) or designated as hazardous substances by Oregon Administrative Rules, Chapter 137, or the United States Environmental

Protection Agency (40 CFR Part 302), and any amendments thereto. Upon County's request, Agency shall immediately provide Material Safety Data Sheets for the products subject to this provision.

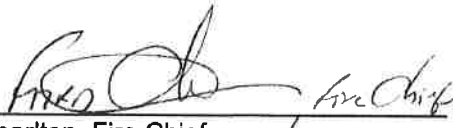
- G. **Debt Limitation.** This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act, and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.
- H. **Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.
- I. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties on the matter of the Project. 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 either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.
- J. **Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- K. **Independent Contractor.** Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.
- L. **No Third-Party Beneficiary.** Agency and County are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement 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 Agreement.

- M. **Subcontract and Assignment.** Agency shall not enter into any subcontracts for any of the work required by this Agreement, or assign or transfer any of its interest in this Agreement by operation of law or otherwise, without obtaining prior written approval from the County, which shall be granted or denied in the County's sole discretion. County's consent to any subcontract shall not relieve Agency of any of its duties or obligations under this Agreement.
- N. **Counterparts.** This Agreement may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- O. **Survival.** All provisions in Sections 5, 7, and 10 (A), (C), (D), (G), (H), (I), (J), (L), (Q), (T), and (U) shall survive the termination of this Agreement, together with all other rights and obligations herein which by their context are intended to survive.
- P. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.
- Q. **Time is of the Essence.** Agency agrees that time is of the essence in the performance this Agreement.
- R. **Successors in Interest.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- S. **Force Majeure.** Neither Agency nor County shall be held responsible for delay or default caused by events outside of the Agency or County's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, Agency shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.
- T. **Confidentiality.** Agency acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire confidential information. Any and all information of any form obtained by Agency or its employees or agents in the performance of this Agreement shall be deemed confidential information of the County ("Confidential Information"). Agency agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Agency 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 purpose unless specifically authorized in writing under this Agreement.

U. **No Attorney Fees.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each party shall be responsible for its own attorneys' fees and expenses.

IN WITNESS HEREOF, the Parties have executed this Agreement by the date set forth opposite their names below.

CLACKAMAS COUNTY FIRE DISTRICT #1



Fred Charlton, Fire Chief
4-30-2020

Date
11300 SE Fuller Rd.

Street Address
Milwaukie, OR 97222

City / State / Zip
(503) 747-2111 / 503-742-2600

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 SCOPE OF WORK

I. Purpose

- A. This Agreement provides the basis for a cooperative working relationship for the provision of medical direction for the Clackamas County Fire District #1.

II. Scope of Cooperation

A. County agrees to:

1. Work with Agency to provide medical director services and to perform the services listed below.
2. Meet with Agency personnel on a mutually agreed upon schedule to develop a program to:
 - a. Ensure that Agency EMS providers meet Oregon State requirements for licensure and have the knowledge, skills and abilities to perform at the standards determined jointly by County and Agency.
 - b. Evaluate each EMS Provider's skill performance annually.
 - c. Provide case reviews.
 - d. Provide round table, or other agreed upon educational activity, on a quarterly basis.
 - e. Oversee and direct training courses.
 - f. Oversee and direct a quality improvement program.
3. Oversee the maintenance, use, and documentation of all Automatic External Defibrillators (AEDs) provided for use by the Agency, in accordance with Federal and State regulations.
4. Provide contact information so that Agency personnel can contact the assigned Medical Director (or designee) in a timely manner.

B. Agency agrees to:

1. Meet with County personnel on a mutually agreed upon schedule to develop and maintain a program to:
 - a. Ensure that Agency EMS providers meet Oregon State requirements for licensure and have the knowledge, skills and abilities to perform at the standards determined jointly by County and Agency.
 - b. Evaluate each EMS Provider's skill performance annually.
 - c. Provide case reviews.
 - d. Oversee and direct training courses.
 - e. Oversee and direct a quality improvement program.

2. Provide an EMS Coordinator to:
 - a. Coordinate training exercises and skill monitoring.
 - b. Maintain a computerized CQI database of all procedures and relevant training for all EMS providers.
 - c. Provide periodic reports to guide training efforts.
3. Agency further agrees to the following regarding the authority of the Medical Director:
 - a. The Agency will not permit its EMS Providers to practice at a level other than that approved by Medical Director.
 - b. Agency personnel will not practice under the medical direction or protocol of any physician other than the one assigned by mutual agreement with the exception of on-line medical control or direct in-person physician supervision provided during patient encounters.
 - c. As per ORS 682.245, Medical Director has the final decision with respect to the standing orders and written authorization to provide EMS care by Agency Department personnel.
 - d. Medical Director may require specific remedial action to correct deficiencies noted in the continuous quality improvement process, or identified violations of federal, state and local laws or regulations.
 - e. County is not an employer of its EMTs, and Agency acknowledges that no employment relationship exists between County and the EMTs employed by the Agency.

III. Compensation

- A. Agency will pay to County an amount not to exceed \$4,200. for services described in Exhibit A. Payments shall be requested and made as follows:

Monthly payments of \$1,050 will be requested by invoice from County.

Payment will be made by Agency within 30 days of receipt of invoice.

- B. All checks shall be made payable to Clackamas County and mailed to the following address:

Clackamas County Public Health Division
Attn: Sherry Olson
2051 Kaen Road Suite 367
Oregon City, OR 97045

Board of Commissioners
Clackamas County

Members of the Board:

Approval of a Personal Services Contract with the Catholic Community Services of
Western Washington, for Crisis and Acute Transition Services

Purpose/ Outcomes	Execution of a contract between the Health, Housing and Human Services Department and Catholic Community Services of Western Washington, for Crisis and Acute Transition Services for youth in Clackamas County.
Dollar Amount and Fiscal Impact	Total contract value including optional renewals through expiration is \$734,260.00
Funding Source	State of Oregon, Oregon Health Authority funding. No County funds involved.
Duration	Effective September 1, 2019 through June 30, 2023.
Previous Board Action	No previous Board action.
Counsel Review	Counsel reviewed and approved Agreement April 29, 2020.
Procurement Review	1. Was the item processed through Procurement? yes <input checked="" type="checkbox"/> no <input type="checkbox"/> 2. If no, provide brief explanation:
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.	#9354

BACKGROUND:

The Behavioral Health Division of the Health, Housing & Human Services Department requests approval of a Personal Services Contract with Catholic Community Services of Western Washington (CCSWW) to provide Crisis and Acute Transition Services (CATS). CCSWW was selected to provide CATS program services following a request for proposal process conducting in May and June 2019. CATS is designed to provide community-based alternative to emergency department “boarding” for children and youth in need of acute psychiatric treatment.

Formerly known as Emergency Department Diversion to Community-Based Services and Supports, CCSWW has provided CATS program services since 2015. These services include and require brief crisis services, stabilization, and transition to community-based supports when children and youth from birth to eighteen (18) years of age, present to emergency departments or crisis centers and are at the risk of admission for psychiatric or behavioral crises.

This Contract, with a maximum value of \$734,260.00, is effective from September 1, 2019 and continues through June 30, 2023.

PROCUREMENT PROCESS:

This project was advertised in accordance with ORS 279B and LCRB Rules on May 1, 2019. Proposals were publically opened June 4, 2019. The County received one (1) proposals from Catholic Community Services of Western Washington. Catholic Community Services of Western Washington's proposal was chosen as most complete and comprehensive and was awarded the Contract through June 30, 2023.

RECOMMENDATION:

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

Respectfully submitted,



Richard Swift, Director
Health, Housing and Human Services

Placed on the Agenda of _____ by the Procurement Division.



CLACKAMAS COUNTY
PERSONAL SERVICES CONTRACT
Contract # 1607 / Behavioral Health Division #9354

This Personal Services Contract (this "Contract") is entered into between Catholic Community Services of Western Washington ("Contractor"), and Clackamas County, a political subdivision of the State of Oregon ("County") on behalf of the Health, Housing, and Human Services Department.

ARTICLE I.

- 1. Effective Date and Duration.** This Contract shall become effective upon the signature of both parties. County and Contractor acknowledge and ratify that Work (defined below) under the Contract was completed before the date of final execution, but not earlier than September 1, 2019. The Work previously performed is and shall remain subject to the terms and conditions of this Contract. County reserves any rights, claims, or causes of action that County may have with respect to Work performed and ratified hereunder. Unless earlier terminated or extended, this Contract shall expire on June 30, 2021. This Contract may be renewed for an additional two (2) year term upon the written agreement of both parties to this Contract.
- 2. Scope of Work.** Contractor shall provide the following personal services: Crisis and Acute Transition Services ("Work" or "Services"), further described in **Exhibits E and G.**
- 3. Consideration.** The County agrees to pay Contractor, from available and authorized funds, a sum not to exceed **three hundred sixty-nine thousand and seven hundred twenty-four dollars (\$369,724.00)** for accomplishing the Work required by this Contract from September 1, 2019 through June 30, 2021. If the parties exercise the optional two-year renewal, the County agrees to pay Contractor a sum not to exceed **three hundred sixty-four thousand five hundred thirty-six dollars (\$364,536.00)** for accomplishing Work during the renewal term. The total payments under this Contract, including any optional renewal, shall not exceed **seven hundred thirty-four thousand two hundred sixty dollars (\$734,260.00)**. For the initial term of this contract (September 1, 2019 through June 30, 2021), County shall pay Contractor a fixed fee of \$16,805.63 per month for Work performed. For the optional renewal term, if exercised, the County shall pay Contractor a fixed fee of \$15,189.00 per month for Work performed.
- 4. Invoices and Payments.** No later than the tenth (10th) day of each month, Contractor shall submit monthly invoices for Work performed. The invoices shall include both the total amount due for all Work provided during the month and the total amount billed to date by Contractor prior to the current invoice.

If Contractor fails to present invoices in proper form within sixty (60) calendar days after the end of the month in which the services were rendered, Contractor waives any rights to present such invoice thereafter and to receive payment therefor. Payments shall be made in accordance with ORS 293.462 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 be obligated to 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.

Invoices shall reference Contract # 1607 / Behavioral Health Division #9354 and be either submitted by email to BHAP@clackamas.us, and APeterson2@clackamas.us or mailed to the following address: Clackamas County Behavioral Health Division

Accounts Payable
2051 Kaen Road, Suite #154

Oregon City, Oregon 97045

5. **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.

6. **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, Exhibit A, Exhibit B, Exhibit C, Exhibit E, Exhibit F, and Exhibit G.

7. **Contractor and County Contacts.**

<p style="text-align: center;">Contractor</p> <p>Administrator: Jessica Brar Phone: 503-758-8222 Email: jessicab@ccsww.org</p>	<p>Clackamas County – Behavioral Health Division County Address: 2051 Kaen Road, Suite 154 Oregon, City, OR 97045 Phone: 503-742-5335 Email: BHContracts@clackamas.us</p>
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Payment information will be reported to the Internal Revenue Service (“IRS”) under the name and taxpayer ID number submitted. (See I.R.S. 1099 for additional instructions regarding taxpayer ID numbers.) Information not matching IRS records will subject Contractor payments to backup withholding.

ARTICLE II.

1. **ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence, in accordance with generally accepted accounting procedures and practices, sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. County and their duly authorized representatives shall have access to the books, documents, papers, and records of Contractor, which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Contractor shall maintain such books and records for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.
2. **AVAILABILITY OF FUTURE FUNDS.** Any continuation or extension of this Contract after the end of the fiscal period in which it is written is contingent on a new appropriation for each succeeding fiscal period sufficient to continue to make payments under this Contract, as determined by the County in its sole administrative discretion.
3. **CAPTIONS.** The captions or headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Contract.
4. **COMPLIANCE WITH APPLICABLE LAW.** Contractor shall comply with all applicable federal, state and local laws, regulations, executive orders, and ordinances, as such may be amended from time to time. Contractor shall further comply with any and all terms, conditions, and other obligations as may be required by applicable State and Federal agencies providing funding for performance under this Contract, whether or not specifically referenced herein.
5. **COUNTERPARTS.** This Contract may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.

- 6. GOVERNING LAW.** This Contract, and all rights, obligations, and disputes arising out of it, shall be governed and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without regard to principles of conflicts of law. Any claim, action, or suit between County and Contractor that arises out of or relates to the performance of this Contract shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the County of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. Contractor, by execution of this Contract, hereby consents to the personal jurisdiction of the courts referenced in this section.
- 7. RESPONSIBILITY FOR DAMAGES; INDEMNITY.** Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, the conduct of Work, or from any act, omission, or neglect of Contractor, its subcontractors, agents, or employees. The Contractor agrees to indemnify, hold harmless and defend the County, and its officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees, subcontractors, or agents. If County does not authorize the attorney engaged by Contractor to represent the County, County may, at its election and expense, assume its own defense and settlement in which event Contractor's duty to indemnify and defend County hereunder shall be null and void and of no effect. The County shall have no authority to defend the claim in the name of the Contractor or any office of the Contractor nor purport to act as legal representative of the Contractor or any office of the Contractor nor to settle any claim on behalf of the Contractor unless agreed to in writing by Contractor and its insurer.
- 8. INDEPENDENT CONTRACTOR STATUS.** The service(s) to be rendered under this Contract are those of an independent contractor. Although the County reserves the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, County cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work. Contractor is not to be considered an agent or employee of County for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; and (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to County employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits.
- 9. INSURANCE.** Contractor shall provide insurance as indicated on **Exhibit B**, attached hereto and by this reference made a part hereof.
- 10. LIMITATION OF LIABILITIES.** This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent. Except for liability arising under or related to Article II, Section 13 or Section 20 neither party shall be liable for (i) any indirect, incidental, consequential or special damages under this Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms.

11. NOTICES. Except as otherwise provided in this Contract, any required notices between the parties shall be given in writing by personal delivery, email, or mailing the same, to the Contract Administrators identified in Article 1, Section 6. If notice is sent to County, a copy shall also be sent to: Clackamas County Procurement, 2051 Kaen Road, Oregon City, OR 97045, or procurement@clackamas.us. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing, and immediately upon personal delivery, or within 2 hours after the email is sent during County's normal business hours (Monday – Thursday, 7:00 a.m. to 6:00 p.m.) (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered.

12. OWNERSHIP OF WORK PRODUCT.

[Reserved]

13. REPRESENTATIONS AND WARRANTIES. Contractor represents and warrants to County that (A) Contractor has the power and authority to enter into and perform this Contract; (B) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (C) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work; (D) Contractor is an independent contractor as defined in ORS 670.600; and (E) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

14. SURVIVAL. All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Article II, Sections 1, 6, 7, 11, 13, 14, 16, 21, 27, 28, 29, and 32, and all other rights and obligations which by their context are intended to survive. However, such expiration shall not extinguish or prejudice the County's right to enforce this Contract with respect to:
(a) any breach of a Contractor warranty; or (b) any default or defect in Contractor performance that has not been cured.

15. SEVERABILITY. If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.

16. SUBCONTRACTS AND ASSIGNMENTS. Contractor shall not enter into any subcontracts for any of the Work required by this Contract, or assign or transfer any of its interest in this Contract by operation of law or otherwise, without obtaining prior written approval from the County, which shall be granted or denied in the County's sole discretion. In addition to any provisions the County may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this Article II, Sections 1, 7, 8, 13, 16 and 27 as if the subcontractor were the Contractor. County's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.

17. SUCCESSORS IN INTEREST. The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.

18. TAX COMPLIANCE CERTIFICATION. The Contractor shall comply with all federal, state and local laws, regulation, executive orders and ordinances applicable to this Contract. Contractor represents and warrants that it has complied, and will continue to comply throughout the duration of this Contract and any extensions, with all tax laws of this state or any political subdivision of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318. Any violation

of this section shall constitute a material breach of this Contract and shall entitle County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract or applicable law.

19. TERMINATIONS. This Contract may be terminated for the following reasons: (A) by mutual agreement of the parties or by the County (i) for convenience upon thirty (30) days written notice to Contractor, or (ii) at any time the County fails to receive funding, appropriations, or other expenditure authority as solely determined by the County; or (B) if contractor breaches any Contract provision or is declared insolvent, County may terminate after thirty (30) days written notice with an opportunity to cure.

Upon receipt of written notice of termination from the County, Contractor shall immediately stop performance of the Work. Upon termination of this Contract, Contractor shall deliver to County all documents, Work Product, information, works-in-progress and other property that are or would be deliverables had the Contract Work been completed. Upon County's request, Contractor shall surrender to anyone County designates, all documents, research, objects or other tangible things needed to complete the Work.

20. REMEDIES. If terminated by the County due to a breach by the Contractor, then the County shall have any remedy available to it in law or equity. If this Contract is terminated for any other reason, Contractor's sole remedy is payment for the goods and services delivered and accepted by the County, less any setoff to which the County is entitled.

21. NO THIRD PARTY BENEFICIARIES. County and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

22. TIME IS OF THE ESSENCE. Contractor agrees that time is of the essence in the performance this Contract.

23. FOREIGN CONTRACTOR. If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.

24. FORCE MAJEURE. Neither County nor Contractor shall be held responsible for delay or default caused by events outside the County or Contractor's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, Contractor shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

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

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

- a. Make payments promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the work provided for in the Contract.

- b. Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of the Contract.
- c. Not permit any lien or claim to be filed or prosecuted against County on account of any labor or material furnished.
- d. Pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
- e. As applicable, the Contractor shall pay employees for work in accordance with ORS 279B.235, which is incorporated herein by this reference. The Contractor shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract, and failure to comply is a breach entitling County to terminate this Contract for cause.
- f. If the Work involves lawn and landscape maintenance, Contractor shall salvage, recycle, compost, or mulch yard waste material at an approved site, if feasible and cost effective.

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

28. NO ATTORNEY FEES. In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Contract, each party shall be responsible for its own attorneys' fees and expenses.

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 a breach of its data security or the confidentiality provisions hereunder.

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

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.

31. COOPERATIVE CONTRACTING. Pursuant to ORS 279A.200 to 279A.225, other public agencies may use this Contract resulting from a competitive procurement process unless the Contractor expressly noted in their proposal/quote that the prices and services are available to the County only. The condition of such use by other agencies is that any such agency must make and pursue contact, purchase order, delivery arrangements, and all contractual remedies directly with Contractor; the County accepts no responsibility for performance by either the Contractor or such other agency using this Contract. With such condition, the County consents to such use by any other public agency.

32. HIPAA COMPLIANCE. Contractor is a business associate as that term is defined under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). As a business associate, Contractor agrees to: a) implement appropriate safeguards and maintain individually identifiable patient health information ("Protected Health Information" or "PHI", including electronic PHI) as required by

HIPAA; b) use and disclose only the minimum necessary PHI; c) use and disclose PHI only as permitted under HIPAA for legal, management and administrative purposes in connection with treatment, payment and healthcare operations or as required by law; d) promptly notify County of disclosures of PHI in violation of HIPAA; e) promptly make PHI available to County and patients upon request;. Contractor acknowledges that PHI received from County shall remain County's property and that within ten (10) business days of County's request or upon termination of this Agreement, said PHI shall be returned to County or be destroyed, if County so directs. If such return or destruction is infeasible, Contractor shall use such PHI only for purposes that make such return or destruction infeasible and the provisions of this Agreement shall survive with respect to such PHI. Contractor shall execute the Qualified Service Organization Business Associate Agreement attached hereto as Exhibit F and incorporated by this reference herein. Contractor shall take all necessary steps, and execute all necessary written instructions, to comply with HIPAA, 42 C.F.R. Part 2, and any other applicable state or federal law.

33. 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

EXHIBIT A
DEFINITIONS (CMHP)

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

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

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

**EXHIBIT B
INSURANCE (CMHP)**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10. "Tail" Coverage. If any of the required insurance policies is on a "claims made" basis, such as professional liability insurance, the Contractor shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of the Contract, for a minimum of twenty-four (24) months following the later of: (i) the Contractor's completion and County's acceptance of all Services required under the Provider Contract; or (ii) the expiration of all warranty periods provided under the Contract. Notwithstanding the foregoing 24-month requirement, if the Contractor elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the 24-month period described above, then the Contractor may request and County may grant approval of the maximum "tail" coverage period reasonably available in the marketplace. If County approval is granted, the Contractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.

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

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

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

Certificate Holder should be:

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

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

BHcontracts@clackamas.us

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

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

EXHIBIT C
CMHP REQUIRED PROVIDER CONTRACT PROVISIONS

- 1. Expenditure of Funds.** Contractor may expend the funds paid to Contractor under this Contract solely on the delivery of contracted services subject to the following limitations (in addition to any other restriction of limitations imposed by this Contract):
 - a.** Contractor may not expend on the delivery of Service any funds paid to Contractor under this Contract in excess of the amount reasonable and necessary to provide quality delivery of these Services.
 - b.** If this Contract requires Contractor to deliver more than one service, Contractor may not expend funds paid to Contractor under this Contract for a particular service on the delivery of any other service.
 - c.** If this Contract requires Contractor to deliver Addiction Treatment, Recovery & Prevention, and Problem Gambling Services, Contractor may not use the funds paid to Contractor under this Contract for such services to:
 - i.** Provide inpatient hospital services;
 - ii.** Make cash payment to intended recipients of health services;
 - iii.** Purchase or improve land, to purchase, construct or permanently improve (other than minor remodeling) any building or other facility or to purchase major medical equipment;
 - iv.** Satisfy any requirement for expenditure of non-federal funds as a condition for receipt of federal funds (whether the federal funds are received under this Contract or otherwise);
 - v.** Carry out any program prohibited by section 245(b) of the Health Omnibus Programs Extension Act of 1988 (codified at 42 U.S.C. 300ee-5), which generally prohibits funds provided under this Contract from being used to provide Individuals with hypodermic needles or syringes so that such Individuals may use illegal drugs, unless the Surgeon General of the Public Health Service determines that a demonstration needle exchange program would be effective in reducing drug abuse.
 - d.** Contractor may expend funds paid to Contractor under this Contract only in accordance with OMB Circulars or 45 CFR Part 75, as applicable on Allowable Costs. If Contractor expends \$750,000 or more in federal funds (from all sources) in a fiscal year beginning on or after December 26, 2014, it shall have a single organization-wide audit conducted in accordance with the provisions of 45 CFR Part 75, subpart F. If Contractor expends less than \$750,000 in a fiscal year beginning on or after that date, it is exempt from Federal audit requirements for that year. Records must be available for review or audit by appropriate officials. Contractor, if subject to this requirement, shall at Contractor's own expense submit to OHA a copy of, or electronic link to, its annual audit subject to this requirement covering the funds expended under this Contract and shall submit or cause to be submitted to OHA the annual audit of any subrecipient(s), contractor(s), or subcontractor(s) of Contractor responsible for the financial management of funds received under this Contract. Copies of all audits must be submitted to OHA within thirty (30) calendar days of completion. Audit costs for audits not required in accordance with the Single Audit Act are unallowable. Contractor may not use the funds received under this Contract for inherently religious activities, as described in 45 CFR Part 87.
-
- 2. Records Maintenance, Access and Confidentiality.**

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

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

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

<http://www.oregon.gov/oha/hsd/amh-mots/Pages/index.aspx>, and the “Who Reports in MOTS Policy”, as stated follows:

Which Behavioral Health Providers are Required to Report in MOTS?

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

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

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

If there are any questions, contact MOTS Support at MOTS.Support@state.or.us.

- 3. Alternative Formats of Written Materials.** In connection with the delivery of Services, Contractor shall:
 - a.** Make available to a Client, without charge to the Client, upon the Client’s, the County’s or the Oregon Health Authority’s request, an and all written materials in alternate, if appropriate, formats as required by the Oregon Health Authority’s administrative rules or by the Oregon Health Authority’s written policies made available to Contractor.
 - b.** Make available to a Client, without charge to the Client, upon the Client’s, County’s or the Oregon Health Authority’s request, any and all written materials in the prevalent non-English languages in the area served by the Contractor.
 - c.** Make available to a Client, without charge to the Client, upon the Client’s, County’s or the Oregon Health Authority’s request, oral interpretation services in all non-English languages in the area served by Contractor.
 - d.** Make available to a Client with hearing impairments, without charge to the Client, upon the Client’s, County’s or the Oregon Health Authority’s request, sign language interpretation services and telephone communications access services.

For purposes of the foregoing, “written material” includes, without limitation, all written materials created or delivered in connection with the services and all Contractor contracts related to this Contract. The County may develop its own forms and materials and with such

forms and materials the County shall be responsible for making them available to a Client, without charge to the Client or OHA, in the prevalent non-English language. OHA shall be responsible for making it forms and materials available, without charge to the Client or CMHP, in the prevalent non-English language.

4. **Reporting Requirements.** Contractor shall prepare and furnish the following information to County and the Oregon Health Authority when a service is delivered under this Contract.
 - a. Client, service and financial information as specified in the applicable Service Description attached hereto and incorporated herein by this reference.
 - b. All additional information and reports that County or the Oregon Health Authority reasonably requests.
5. **Compliance with Law.** Contractor shall comply with all state and local laws, regulations, executive orders and ordinances applicable to the Contract or to the delivery of services hereunder. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Contract:
 - a. all applicable requirements of state civil rights and rehabilitation statutes, rules and regulations;
 - b. all state laws governing operation of community mental health programs, including without limitation all administrative rules adopted by the Oregon Health Authority related to community mental health programs or related to client rights, OAR 943-005-0000 through 943-005-0070, prohibiting discrimination against Individuals with disabilities;
 - c. all state laws requiring reporting of client abuse; and
 - d. ORS 659A.400 to 659A.409, ORS 659A.145 and all regulations and administrative rules established pursuant to those laws in the construction, remodeling, maintenance and operation of any structures and facilities, and in the conduct of all programs, services and training associated with the delivery of services under this Contract.

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

6. Unless Contractor is a State of Oregon governmental agency, Contractor agrees that it is an independent contractor and not an agent of the State of Oregon, the Oregon Health Authority or County.
7. To the extent permitted by applicable law, Contractor shall defend (in the case of the state of Oregon and the Oregon Health Authority, subject to ORS Chapter 180), save and hold harmless

the State of Oregon and Clackamas County, and their officers, employees, and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of, or relating to the operations of the Contractor, including but not limited to the activities of Contractor or its officers, employees, subcontractors or agents under this Contract.

8. Contractor understands that Contractor may be prosecuted under applicable federal and state criminal and civil laws for submitting false claims, concealing material facts, misrepresentation, falsifying data system input, other acts of misrepresentation, or conspiracy to engage therein.
9. Contractor shall only conduct transactions that are authorized by the County for transactions with the Oregon Health Authority that involve County funds directly related to this Contract.
10. Contractor(s) that are not units of local government as defined in ORS 190.003 shall obtain, at Contractor's expense, and maintain in effect with respect to all occurrences taking place during the term of the Contract, insurance requirements as defined in the Contract and incorporated herein by this reference (**Exhibit B, Insurance**).
11. Contractor(s) that are not units of local government as defined in ORS 190.003, shall indemnify, defend, save and hold harmless the State of Oregon and its officers, employees and agents (Indemnitee) from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys' fees) arising from a tort (as not or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of the officers, agents, employees or subcontractors of the contractor (Claims). It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the Contractor from and against any and all claims.
12. Contractor shall include sections 1 through 11, in substantially the form set forth above, in all permitted Contractor contracts under this Contract.
13. **Ownership of Intellectual Property.**
 - a. Except as otherwise expressly provided herein, or as otherwise required by state or federal law, OHA and the County will not own the right, title and interest in any intellectual property created or delivered by the Contractor in connection with the Services. With respect to that portion of the intellectual property that the Contractor owns, Contractor grants to OHA and the County a perpetual, worldwide, non-exclusive, royalty-free and irrevocable license, subject to any provisions in the Contract that restrict or prohibit dissemination or disclosure of information, to: (1) use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the intellectual property; (2) authorize third parties to exercise the rights set forth in Section 13.a.(1) on OHA and the County's behalf; and (3) sublicense to third parties the rights set forth in Section 13.a.(1).
 - b. If state or federal law requires that OHA or County grant to the United States a license to any intellectual property, or if state or federal law requires that OHA or the United States own the intellectual property, then Contractor shall execute such further documents and instruments as OHA may reasonably request in order to make any such grant or to assign ownership in the intellectual property created or delivered by Contractor in connection with the Services, OHA will grant a perpetual, worldwide, non-exclusive, royalty-free and irrevocable license, subject to any provisions in the Contract that restrict or prohibit dissemination or disclosure of information, to Contractor to use, copy distribute, display, build upon and improve the intellectual property.

EXHIBIT D
CMHP REQUIRED FEDERAL TERMS AND CONDITIONS

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

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

 - a.** No federal appropriated funds have been paid or will be paid, by or on behalf of Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal

contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative contract, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative contract.

- b.** If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the Contractor shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
- c.** Contractor shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients and subcontractors shall certify and disclose accordingly.
- d.** This certification is a material representation of fact upon which reliance was placed when this Contract was made or entered into. Submission of this certification is a prerequisite for making or entering into this Contract imposed by section 1352, Title 31 of the U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- e.** No part of any federal funds paid to Contractor under this Contract shall be used, other than for normal and recognized executive legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, electronic communication, radio, television, or video presentation designed to support or defeat the enactment of legislation before the United States Congress or any State or local legislature itself, or designed to support or defeat any proposed or pending regulation, administrative action, or order issued by the executive branch of any State or local government.
- f.** No part of any federal funds paid to Contractor under this Contract shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence the enactment of legislation, appropriations, regulation, administrative action, or Executive order proposed or pending before the United States Congress or any State government, State legislature or local legislature or legislative body, other than for normal and recognized executive-legislative relationships or participation by an agency or officer of a State, local or tribal government in policymaking and administrative processes within the executive branch of that government.
- g.** The prohibitions in subsections (e) and (f) of this section shall include any activity to advocate or promote any proposed, pending or future Federal, State or local tax increase, or any proposed, pending, or future requirement or restriction on any legal consumer product, including its sale or marketing, including but not limited to the advocacy or promotion of gun control.
- h.** No part of any federal funds paid to Contractor under this Contract may be used for any activity that promotes the legalization of any drug or other substance included in schedule I of the schedules of controlled substances established under section 202 of the Controlled Substances Act except for normal and recognized executive congressional communications. This limitation shall not apply when there is significant medical evidence of a therapeutic advantage to the use of such drug or other substance or that federally sponsored clinical trials are being conducted to determine therapeutic advantage.

- 6. Resource Conservation and Recovery.** Contractor shall comply with all mandatory standards and policies that relate to resource conservation and recovery pursuant to the Resource Conservation and Recovery Act (codified at 42 U.S.C. 6901 et. seq.). Section 6002 of that Act

(codified at 42 U.S.C. 6962) requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency. Current guidelines are set forth in 40 CFR Part 247.

7. **Audits.** Subrecipients, as defined in 45 CFR 75.2, shall comply with applicable Code of Federal Regulations (CFR) governing expenditure of federal funds. If a sub-recipient expends \$750,000 or more in federal funds (from all sources) in a fiscal year beginning on or after December 26, 2014, it shall have a single organization-wide audit conducted in accordance with the provisions of 45 CFR part 75, subpart F. Copies of all audits must be submitted to County within thirty (30) calendar days of completion. If a sub recipient expends less than \$750,000 in a fiscal year beginning on or after December 26, 2014, it is exempt from Federal audit requirements for that year. Records must be available for review or audit by appropriate officials.
8. **Debarment and Suspension.** Contractor shall not permit any person or entity to be a provider if the person or entity is listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal Procurement or Non-procurement Programs" in accordance with Executive Orders No. 12549 and No. 12689, "Debarment and Suspension". (See 2 CFR Part 180.) This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory authority other than Executive Order No. 12549. Providers with awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.
9. **Drug-Free Workplace.** Contractor shall comply with the following provisions to maintain a drug-free workplace: (i) Contractor certifies that it will provide a drug-free workplace by publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance, except as may be present in lawfully prescribed or over-the-counter medications, is prohibited in Contractor's workplace or while providing Services to OHA clients. Contractor's notice shall specify the actions that will be taken by Contractor against its employees for violation of such prohibitions; (ii) Establish a drug-free awareness program to inform its employees about: The dangers of drug abuse in the workplace, Contractor's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations; (iii) Provide each employee to be engaged in the performance of Services under this Contract a copy of the statement mentioned in paragraph (i) above; (iv) Notify each employee in the statement required by paragraph (i) above that, as a condition of employment to provide services under this Contract, the employee will: abide by the terms of the statement, and notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) calendar days after such conviction; (v) Notify OHA within ten (10) calendar days after receiving notice under subparagraph (iv) above from an employee or otherwise receiving actual notice of such conviction; (vi) Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program by any employee who is so convicted as required by Section 5154 of the Drug-Free Workplace Act of 1988; (vii) Make a good-faith effort to continue a drug-free workplace through implementation of subparagraphs (i) through (vi) above; (viii) Require any provider to comply with subparagraphs through (vii) above; (ix) Neither Contractor, or any of Contractor's employees, officers, agents may provide any Service required under this Contract while under the influence of drugs. For purposes of this provision, "under the influence" means: observed abnormal behavior or impairments in mental or physical performance leading a reasonable person to believe the Contractor or Contractor's employee, officer, agent has used a controlled substance, prescription or non-prescription medication that impairs the Contractor or Contractor's employee, officer, agent or Contractor's performance of

essential job function or creates a direct threat to OHA clients or others. Examples of abnormal behavior include, but are not limited to: hallucinations, paranoia or violent outbursts. Examples of impairments in physical or mental performance include, but are not limited to: slurred speech, difficulty walking or performing job activities; and (x) Violation of any provision of this subsection may result in termination of this Contract.

10. **Pro-Children Act.** Contractor shall comply with the Pro-Children Act of 1994 (codified at 20 U.S.C. Section 6081 et. seq.).
11. **Medicaid Services.** To the extent Contractor provides any Service in which costs are paid in whole or in part by Medicaid, Contractor shall comply with all applicable federal and state laws and regulation pertaining to the provision of Medicaid Services under the Medicaid Act, Title XIX, 42 U.S.C. Section 1396 et. seq., including without limitation:
 - a. Keep such records as are necessary to fully disclose the extent of the services provided to Individuals receiving Medicaid assistance and shall furnish such information to any state or federal agency responsible for administering the Medicaid program regarding any payments claimed by such person or institution for providing Medicaid Services as the state or federal agency may from time to time request. 42 U.S.C. Section 1396a (a)(27); 42 CFR Part 431.107(b)(1) & (2).
 - b. Comply with all disclosure requirements of 42 CFR Part 1002.4(a) and 42 CFR 455 Subpart (B).
 - c. Maintain written notices and procedures respecting advance directives in compliance with 42 U.S.C. Section 1396 (a) (57) and (w), 42 CFR Part 431.107 (b) (4), and 42 CFR Part 489 subpart I.
 - d. Certify when submitting any claim for the provision of Medicaid Services that the information submitted is true, accurate and complete. Contractor shall acknowledge Contractor's understanding that payment of the claim will be from federal and state funds and that any falsification or concealment of a material fact may be prosecuted under federal and state laws.
 - e. Entities receiving \$5 million or more annually (under this Contract and any other Medicaid agreement) for furnishing Medicaid health care items or services shall, as a condition of receiving such payments, adopt written fraud, waste and abuse policies and procedures and inform employees, providers, and agents about the policies and procedures in compliance with Section 6032 of the Deficit Reduction Act of 2005, 42 U.S.C. § 1396a (a) (68).
12. **ADA.** Contractor shall comply with Title II of the Americans with Disabilities Act of 1990 (codified at 42 U.S.C. 12131 et. seq.) in the construction, remodeling, maintenance and operation of any structures and facilities, and in the conduct of all programs, services and training associated with the delivery of Services.
13. **Agency-Based Voter Registration.** If applicable, Contractor shall comply with the Agency-based Voter Registration sections of the National Voter Registration Act of 1993 that require voter registration opportunities be offered where an Individual may apply for or receive an application for public assistance.
14. **Disclosure.**
 - a. 42 CFR 455.104 requires the State Medicaid agency to obtain the following information from any provider of Medicaid or CHIP services, including fiscal agents of providers and managed care entities: (1) the name and address (including the primary business address, every business location and P.O. Box address) of any person (Individual or corporation) with an ownership or control interest in the provider, fiscal agent or managed care entity; (2) in the case of an Individual, the

date of birth and Social Security Number, or, in the case of a corporation, the tax identification number of the entity, with an ownership interest in the provider, fiscal agent or managed care entity or of any subcontractor in which the provider, fiscal agent or managed care entity has a 5% or more interest; (3) whether the person (Individual or corporation) with an ownership or control interest in the provider, fiscal agent or managed care entity is related to another person with ownership or control interest in the provider, fiscal agent or managed care entity as a spouse, parent, child or sibling, or whether the person (Individual or corporation) with an ownership or control interest in any subcontractor in which the provider, fiscal agent or managed care entity has a 5% or more interest is related to another person with ownership or control interest in the provider, fiscal agent or managed care entity as a spouse, parent, child or sibling; (4) the name of any other provider, fiscal agent or managed care entity in which an owner of the provider, fiscal agent or managed care entity has an ownership or control interest; and, (5) the name, address, date of birth and Social Security Number of any managing employee of the provider, fiscal agent or managed care entity.

- b. 42 CFR 455.434 requires as a condition of enrollment as a Medicaid or CHIP provider, to consent to criminal background checks, including fingerprinting when required to do so under state law, or by the category of the provider based on risk of fraud, waste and abuse under federal law. As such, a provider must disclose any person with a 5% or greater direct or indirect ownership interest in the provider whom has been convicted of a criminal offense related to that person's involvement with the Medicare, Medicaid, or title XXI program in the last ten (10) years.
- c. County or OHA reserves the right to take such action required by law, or where County or OHA has discretion, it deems appropriate, based on the information received (or the failure to receive) from the provider, fiscal agent or managed care entity.

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

- a. **Order for Admissions:**
 - (i) Pregnant women who inject drugs;
 - (ii) Pregnant substance abusers;
 - (iii) Other Individuals who inject drugs; and
 - (iv) All others.
- b. **Women's or Parent's Services.** If Contractor provides A&D 61 and A&D 62 Services, Contractor must:
 - (i.) Treat the family as a unit and admit both women or parent and their children if appropriate.
 - (ii.) Provide or arrange for the following services to pregnant women and women with dependent children:
 - 1. Primary medical care, including referral for prenatal care;
 - 2. Pediatric care, including immunizations, for their children;
 - 3. Gender-specific treatment and other therapeutic interventions, e.g. sexual and physical abuse counseling, parenting training, and childcare;
 - 4. Therapeutic interventions for children in custody of women or parent in treatment, which address, but are not limited to, the children's developmental needs and issues of abuse and neglect; and
 - 5. Appropriate case management services and transportation to ensure that women or parents and their children have access to the services in 1 through 4 above.

- c. **Pregnant Women.** If Contractor provides any Addiction Treatment, Recovery & Prevention Services other than A&D 84, Problem Gambling, Client Finding Outreach Services, Contractor must:
 - (i.) Within the priority categories, if any, set forth in a particular Service Description, give preference in admission to pregnant women in need of treatment, who seek or are referred for and would benefit from such Services, within forty-eight (48) hours;
 - (ii.) If Contractor has insufficient capacity to provide treatment Services to a pregnant woman, Contractor must refer the women to another Provider with capacity or if no available treatment capacity can be located, the outpatient Provider that the Individual is enrolled with will ensure that Interim Services are being offered. Counseling on the effects of alcohol and drug use on the fetus must be given within forty-eight (48) hours, including a referral for prenatal care; and
 - (iii.) Perform outreach to inform pregnant women of the availability of treatment Services targeted to them and the fact that pregnant women receive preference in admission to these programs.
- d. **Intravenous Drug Abusers.** If Contractor provides any Addiction Treatment, Recovery & Prevention Services other than A&D 84, Problem Gambling, Client Finding Outreach Services, Contractor must:
 - (i.) Within the priority categories, if any, set forth in a particular Service Description and subject to the preference for pregnant women described above, give preference in admission to intravenous drug abusers;
 - (ii.) Programs that receive funding under the grant and that treat Individuals for intravenous substance abuse, upon reaching ninety (90) percent of its capacity to admit Individuals to the program, must provide notification of that fact to the State within seven (7) calendar days;
 - (iii.) If Contractor receives a request for admission to treatment from an intravenous drug abuse, Contractor must, unless it succeeds in referring the Individual to another Provider with treatment capacity, admit the Individual to treatment not later than:
 1. Fourteen (14) calendar days after the request for admission to Contractor is made;
 2. One hundred-twenty (120) after the date of such request if no Provider has the capacity to admit the Individual on the date of such request and, if Interim Services are made available not less than forty-eight (48) hours after such request; or
 3. If Contractor has insufficient capacity to provide treatment Services to an intravenous drug abuser, refer the intravenous drug abuser to another Provider with capacity or if no available treatment capacity can be located, the outpatient provider that the Individual is enrolled with will ensure that interim services are being offered. If the Individual is not enrolled in outpatient treatment and is on a waitlist for residential treatment, the provider referring the Individual to residential services will make available counseling and education about human immunodeficiency virus (HIV) and tuberculosis (TB), risk of sharing needles, risks of transmission to sexual partners and infant, steps to ensure HIV and TB transmission does not occur, referral for HIV or TB treatment services, if necessary, within forty-eight (48) hours.
- e. **Infectious Diseases.** If Contractor provides any Addiction Treatment, Recovery & Prevention Services, other than A&D 84, Problem Gambling, Client Finding Outreach Services, Contractor must:

- (i.) Complete a risk assessment for infectious disease including human immunodeficiency virus (HIV) and tuberculosis (TB), as well as sexually transmitted diseases, based on protocols established by OHA, for every Individual seeking Services from Contractor; and
 - (ii.) Routinely make tuberculosis services available to each Individual receiving Services for alcohol/drug abuse either directly or through other arrangements with public or non-profit entities and, if Contractor denies an Individual admission on the bases of lack of capacity, refer the Individual to another provider of tuberculosis services.
 - (iii.) For purposes of (ii) above, “tuberculosis services” means:
 1. Counseling the Individual with respect to tuberculosis;
 2. Testing to determine whether the Individual has contracted such disease and testing to determine the form of treatment for the disease that is appropriate for the Individual; and
 3. Appropriate treatment services.
- f. OHA Referrals.** If Contractor provides any Addiction Treatment, Recovery & Prevention Services other than A&D 84, Problem Gambling, Client Finding Outreach Services, Contractor must, within the priority categories, if any, set forth in a particular Service Description and subject to the preference for pregnant women and intravenous drug users described above, give preference in Addiction Treatment, Recovery & Prevention and Problem Gambling Service delivery to persons referred by OHA.
- g. Barriers to Treatment.** Where there is a barrier to delivery of any Addiction Treatment, Recovery & Prevention and Problem Gambling Service due to culture, gender, language, illiteracy, or disability, Contractor shall develop support services available to address or overcome the barrier, including:
- (i.) Providing, if needed, hearing impaired or foreign language interpreters.
 - (ii.) Providing translation of written materials to appropriate language or method of communication.
 - (iii.) Providing devices that assist in minimizing the impact of the barrier.
 - (iv.) Not charging clients for the costs of measures, such as interpreters, that are required to provide nondiscriminatory treatment.
- h. Misrepresentation.** Contractor shall not knowingly or willfully make or cause to be made any false statement or representation of a material fact in connection with the furnishing of items or Services for which payments may be made by County or OHA.
- i. Oregon Residency.** Addiction Treatment, Recovery & Prevention and Problem Gambling Services funded through this Contract, may only be provided to residents of Oregon. Residents of Oregon are Individuals who live in Oregon. There is no minimum amount of time an Individual must live in Oregon to qualify as a resident so long as the Individual intends to remain in Oregon. A child’s residence is not dependent on the residence of his or her parents. A child living in Oregon may meet the residency requirement if the caretaker relative with whom the child is living is an Oregon resident.
- j. Tobacco Use.** If Contractor has Addiction Treatment, Recovery & Prevention Services treatment capacity that has been designated for children, adolescents, pregnant women, and women with dependent children, Contractor must implement a policy to eliminate smoking and other use of tobacco at the facilities where the Services are delivered and on the grounds of such facilities.
- k. Client Authorization.** Contractor must comply with 42 CFR Part 2 when delivering an Addiction Treatment, Recovery & Prevention Service that includes disclosure of Client information for purposes of eligibility determination. Contractor must obtain Client authorization for disclosure of billing information, to the extent and in the manner required by 42 CFR Part 2, before a Disbursement Claim is submitted with

respect to delivery of an Addiction Treatment, Recovery & Prevention Service to that Individual.

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

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

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

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

17. Community Mental Health Block Grant (CFDA 93.958). All funds, if any, awarded under this Contract for Community Mental Health Services are subject to the federal use restrictions and requirements set forth in Catalog of Federal Domestic Assistance Number 93.958 and to the federal statutory and regulatory restrictions imposed by or pursuant to the Community Mental Health Block Grant portion of the Public Health Services Act, 42 U.S.C. 300x-1 *et. seq.*, and Contractor shall comply with those restrictions.

18. Substance Abuse Prevention and Treatment (CFDA 93.959). To the extent Contractor provides any Service in which costs are paid in whole or in part by the Substance Abuse, Prevention, and Treatment Block Grant, Contractor shall comply with federal rules and statutes pertaining to the Substance Abuse, Prevention, and Treatment Block Grant, including the reporting provisions of the Public Health Services Act (42 U.S.C. 300x through 300x-66) and 45 CFR 96.130 regarding the sale of tobacco products. Regardless of funding source, to the extent Contractor provides any substance abuse prevention or treatment services, Contractor shall comply with the confidentiality requirements of 42 CFR Part 2. CMHP may not use the funds received under this Contract for inherently religious activities, as described in 45 CFR Part 87.

19. Information Required by 2 CFR Subtitle B with guidance at 2 CFR Part 200. All required data elements in accordance with 45 CFR 75.352 are available at: <http://www.oregon.gov/oha/hsd/amh/Pages/federal-reporting.aspx>.

20. Super Circular Requirements. 2 CFR Part 200, or the equivalent applicable provision adopted by the awarding agency in 2 CFR Subtitle B, including but not limited to the following:

- a. **Property Standards.** 2 CFR 200.313, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, which generally describes the required maintenance, documentation, and allowed disposition of equipment

purchased with federal funds.

- b. Procurement Standards.** When procuring goods and services (including professional consulting services), applicable state procurement regulations found in the Oregon Public Contracting Code, ORS chapters 279A, 279B, and 279C or 2 CFR §§ 200.318 through 200.326, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, as applicable.
- c. Contract Provisions.** The contract provisions listed in 2 CFR Part 200, Appendix II, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, that are hereby incorporated into this Exhibit, are, to the extent applicable, obligations of Contractor.

EXHIBIT E
CMHP SERVICE ELEMENT - MHS 08

MHS 08 – CRISIS AND ACUTE TRANSITION SERVICES (CATS)
(Formerly known as Emergency Department Diversion to Community-Based Services and Supports)

1. Service Description

Crisis and Acute Transition Services (CATS) (MHS 08 Services) are designed to provide a community-based alternative to Emergency Department “boarding” for children, youth, and young adults (Individuals) in need of acute psychiatric treatment, who are awaiting inpatient psychiatric hospitalization. ORS 430.630.

The program includes and requires brief crisis services, stabilization, and transition to community-based supports and services when Individuals from birth through eighteen (18) years of age present to emergency departments or crisis centers and are at risk of admission for psychiatric or behavioral crises. Programs must serve all Individuals presenting in the settings indicated above, including those with public, private, or no insurance.

2. Performance Requirements

- a. Eligible Population: Individuals from birth through eighteen (18) years of age who have symptoms consistent with psychiatric or serious emotional disorders, and present at program partner Emergency Departments or community crisis centers (those that have a contractual agreement with the OHA Contract holder or County). This includes Individuals who are uninsured, underinsured, not eligible for Medicaid, or have exhausted Medicaid services, including those who meet the criteria for the Citizen Alien Waived Medical Program. Programs are expected to maximize this funding to enhance an existing continuum of crisis and acute care for Individuals and families through the provision of the elements listed below.
- b. Clinical, Social, and Residential Services Provided:
 - i. These Services are appropriate when the Individual is given a mental health and safety assessment, has reached an established level of acuity (through administration of a standardized acuity measure), and it is deemed safe, appropriate, and optimal to refer them to a CATS program.
 - ii. Clinical services normally last up to forty-five (45) calendar days, or as long as is necessary to provide the Individual and their family with sufficient stabilization and support to establish strong connectivity with community-based supports.
 - iii. Initial contact from the clinical team will occur within 1-3 hours of the referral. Within seventy-two (72) hours of the referral, both the family partner and the clinical team will meet with the Individual and family together. Contacts should be as frequent as is necessary for the goals of the project to occur, in person as much as possible, but no less than twice per week.
- c. CATS programs are team-based. Each team provides an array of recovery-oriented agency or community-based services and supports, including, but not limited to:
 - i. Functioning as a collaborative unit, sharing duties, information and support for each Individual and family. This requires ongoing and frequent communication, supportive interagency processes, and intentional organization to support the provision of CATS as a model of coordinated care. The work is organized and agreed upon through a Memorandum of Understanding (MOU) between each program’s partners, to be submitted to OHA within forty-five (45) calendar days of the execution of the Contract. Hospitals must be partners in the service design and delivery;

- ii. Conducting assessment, that includes mental health assessment, safety assessment, acuity level and safety plan prior to discharge from crisis center or emergency department;
 - iii. Alleviating the immediate crisis through connections to the family and Individual, and work with mental health team members;
 - iv. Providing CATS Guidebook for Families, or the equivalent, describing to the Individual and family the anticipated experience in the CATS program, and providing Individuals and families with relevant and individualized psychosocial information. An equivalent resource means a guide or booklet (print or online) which includes all items listed in the Family Transition Inventory/Checklist, and which has been reviewed by OHA and OHSU staff;
 - v. Establishing with the family and Individual a transition plan designed to safely prevent readmission to the emergency department, and improved access and connectivity to community resources;
 - vi. Conduction a closing meeting (in-person or via phone) must be completed with the family prior to transitioning care, and data must be collected at this meeting. If the team is unable to have a closing meeting with the family, documentation explaining the circumstances is required.
 - vii. Participation in collaborative state-wide efforts to establish shared programmatic standards, expectations for results and services, and key reporting requirements; and
 - viii. Specific services associated with the required elements must include, but are not limited to:
 - 1. Suicide-Related Interventions; Safety assessment, Counseling On Lethal Means (CALM), and lethal means counseling where needed;
 - 2. Family and Young Adult Peer Support;
 - 3. Access to and coordination of immediate resources;
 - 4. Brief mental health therapy provided during CATS participation;
 - 5. Rapid access to psychiatric and counseling services;
 - 6. Transition to existing health and community resources; and
 - 7. Use of linguistically and culturally appropriate materials for the Individual and family, necessary for them to understand and to participate fully in the CATS program.
- d. Who Can Provide These Services:
- i. Family and youth peer support specialist, care coordinators, licensed medical prescribers, Qualified Mental Health Professional (QMHP), mental health therapists, and skills trainers;
 - ii. Programs must provide dedicated CATS staff and family partners. Those individuals are presented to the Individual and family as a combined resource that is the cornerstone of the CATS model;
 - iii. Recommended supplemental training might include supplemental peer and clinical training in crisis response, use of the CATS Guidebook for Families, use of the Oregon Health & Sciences University (OHSU) RedCap survey, and any others that would enhance work with the families in crisis; and
 - iv. Staff working in the programs must have training in suicide prevention and intervention strategies, and Trauma Informed Care (TIO), and must be provided with ongoing maintenance of the skills and practice associated with these approaches.
- e. Setting(s) for service delivery: Emergency departments, crisis centers, provider sites, homes, and community settings. Locations as preferred by the Individual and family, and family-inclusive safety planning.
- f. County is required to monitor sub-contracted Services and provide initial copies of the sub-contract to OHA staff, and work with OHA staff to devise an ongoing monitoring process.

3. Reporting Requirements

All Individuals receiving MHS 08 Services with funds provided through this Contract must be enrolled and that Individual's record maintained in the Measures and Outcomes Tracking System (MOTS) as specified in OHA's MOTS Reference Manual, located at: <http://www.oregon.gov/OHA/HSD/AMH-MOTS/pages/resource.aspx>, and the Who Reports in MOTS Policy.

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

4. Special Reporting Requirements

Contractor providing MHS 08 Services directly to Individuals shall submit data quarterly, as specified by OHA, directly to the Oregon Health & Science University (OHSU) RedCap Data System.

Contractor shall meet data reporting requirements to input data with fourteen (14) calendar days of closure, unless otherwise arranged with the OHSU/OHA team. This includes timely collection and submission of outcome-based measures for each Individual in the program, including but not limited to, demographic and presenting referral information, KIDSCREEN-10, Crisis Assessment Tool, intervention details, and transition plan details.

a. Survey data that includes, but not limited to, the following:

- i. Client demographics;
- ii. Presenting diagnosis and issues;
- iii. Diversions;
- iv. Re-admissions;
- v. Response time;
- vi. Connectivity with peer support;
- vii. Initial contacts;
- viii. Frequency of contact;
- ix. Transitional service referrals; and
- x. Other information deemed beneficial to the development of the Service.

b. Contractor is required to encourage and enable CATS program participants, both Individuals and family members, to participate in a follow-up study. Staff from OHSU Child and Adolescent Psychiatry Unit will follow-up with CATS participants at exit and at established post-exit interviews. Data from follow-up interviews will be shared with program teams and agencies with the goal of improved services.

5. Confirmation of Performance and Reporting Requirements

Contractor shall be required to demonstrate through the data properly reported in accordance with the "Reporting Requirements" section above and any reporting requirement contained in Exhibit G, Scope of Work, of this Contract, how funds provided for MHS 04 Services were utilized consistent with the terms and limitations herein to meet the performance requirement of this Service Description, and that the Contractor may be subject to the monitoring and review of performance requirements and quality measures by OHA.

EXHIBIT F
QUALIFIED SERVICE ORGANIZATION BUSINESS ASSOCIATE AGREEMENT

This Qualified Service Organization Business Associate Agreement (“Agreement”) is entered into as of the date of the final executing signature to the Agreement (“Effective Date”) by and between **Clackamas County Health, Housing and Human Services, Health Centers Division** (“Covered Entity”) and **Catholic Community Services of Western Washington** (“Business Associate”) in conformance with the Health Insurance Portability and Accountability Act of 1996 and its regulations (“HIPAA”), and Confidentiality of Substance Use Disorder Patient Records, 42 CFR Part 2 (“Confidentiality Rule”).

RECITALS

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

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

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

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

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

Now, therefore, the parties hereby agree as follows:

SECTION I – DEFINITIONS

- 1.1 “Breach” is any unauthorized acquisition, access, use or disclosure of Unsecured PHI, unless the Covered Entity demonstrates that there is a low probability that the PHI has been compromised. The definition of Breach excludes the following uses and disclosures:
 - 1.1.1 Unintentional access by a Covered Entity or Business Associate in good faith and within a Workforce member’s course and scope of employment or placement;
 - 1.1.2 Inadvertent one time disclosure between Covered Entity or Business Associate Workforce members; and
 - 1.1.3 The Covered Entity or Business Associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain the information.
- 1.2 “Covered Entity” shall have the meaning given to such term under the HIPAA Rules, including, but not limited to, 45 CFR §160.103.
- 1.3 “Designated Record Set” shall have the meaning given to such term under the HIPAA Rules, including, but not limited to 45 CFR §164.501.
- 1.4 “Disclose” or “disclosure” shall have the meaning given to such terms under the Confidentiality Rule, 42 CFR §2.11.
- 1.5 “Effective Date” shall be the Effective Date of this Agreement.
- 1.6 "Electronic Protected Health Information" or "Electronic PHI" shall have the meaning given to such term at 45 CFR §160.103, limited to information of the Covered Entity that the Business Associate creates, receives, accesses, maintains or transmits in electronic media on behalf of the Covered Entity under the terms and conditions of this Agreement.
- 1.7 “Health Care Operations” shall have the meaning given to such term under the HIPAA Rules, including, but not limited to, 45 CFR §164.501.
- 1.8 “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules codified at 45 CFR Part 160 and Part 164.
- 1.9 “Individual” shall have the meaning given to such term in 45 CFR §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).

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

SECTION II – OBLIGATIONS AND ACTIVITIES OF THE BUSINESS ASSOCIATE

The Business Associate agrees to the following:

- 2.1 Not to use or further disclose PHI other than as permitted or required by this Agreement or as Required by Law;
- 2.2 To use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to Electronic PHI, to prevent use or disclosure of PHI other than as provided for by this Agreement;
- 2.3 To mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a use or disclosure of PHI by the Business Associate in violation of the requirements of this Agreement;
- 2.4 To immediately report to the Covered Entity any use or disclosure of PHI not provided for by this Agreement of which it becomes aware, including any Security Incident of which it becomes aware;
- 2.5 In accordance with 45 CFR §§164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any agent, including a subcontractor, that creates, receives, maintains, or transmits PHI on behalf of the Business Associate agrees in writing to the same restrictions, conditions and requirements that apply to the Business Associate with respect to such PHI. Notwithstanding the preceding language of this subsection, Business Associate acknowledges that PHI obtained by the Business Associate relating to individuals who may have been diagnosed as needing, or who have received, substance use disorder treatment services, diagnosis or referral for treatment shall be maintained and used only for the purposes intended under this Agreement and in conformity with all applicable provisions of the Confidentiality Rule. This information received from the Covered Entity, is protected by the Confidentiality Rule and therefore the Business Associate is specifically prohibited from re-disclosing such information to agents or subcontractors without specific written consent of the subject Individual;
- 2.6 To provide access, at the request of the Covered Entity, and in the time and manner designated by the Covered Entity, to PHI in a Designated Record Set, to the Covered Entity or, as directed by the

- Covered Entity, to the Individual or the Individual's designee as necessary to meet the Covered Entity's obligations under 45 CFR §164.524; provided, however, that this Section is applicable only to the extent the Designated Record Set is maintained by the Business Associate for the Covered Entity;
- 2.7 To make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR §164.526 at the request of the Covered Entity or an Individual, and in the time and manner designated by the Covered Entity; provided, however, that this Section is applicable only to the extent the Designated Record Set is maintained by the Business Associate for the Covered Entity;
 - 2.8 To make internal practices, books and records, including policies and procedures on PHI, relating to the use and disclosure of PHI received from, or created or received by the Business Associate on behalf of, the Covered Entity available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary's determining the Covered Entity's and the Business Associate's compliance with the HIPAA Rules;
 - 2.9 To document such disclosures of PHI and information related to such disclosures as would be required for the Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528;
 - 2.10 To comply with the confidentiality, disclosure and re-disclosure requirements of the Confidentiality Rule as applicable;
 - 2.11 To resist any efforts in judicial proceedings any efforts to obtain access to the PHI protected by the Confidentiality Rule except as expressly provided for in the Confidentiality Rule;
 - 2.12 To provide to the Covered Entity or an Individual, in a time and manner designated by the Covered Entity, information collected in accordance with Section 2.9 of this Agreement, to permit the Covered Entity to respond to a request by an accounting of disclosures of PHI in accordance with 45 CFR §164.528;
 - 2.13 That if it creates, receives, maintains, or transmits any Electronic PHI on behalf of the Covered Entity, it will implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic PHI, and it will ensure that any agents (including subcontractors) to whom it provides such electronic PHI agrees to implement reasonable and appropriate security measures to protect the PHI. The Business Associate will report to the Covered Entity any Security Incident of which it becomes aware;
 - 2.14 To retain records related to the PHI hereunder for a period of six (6) years unless this Agreement is terminated prior thereto. In the event of termination of this Agreement, the provisions of Section V of this Agreement shall govern record retention, return or destruction;
 - 2.15 To promptly notify the Covered Entity of a Breach of Unsecured PHI as soon as practicable, but in no case later than 10 calendar days, after the discovery of such Breach. A Breach shall be treated as discovered as of the first day on which such Breach is known, or by exercising reasonable diligence would have been known, to any person, other than the person committing the Breach, who is an employee, officer, or agent of Business Associate. The notification shall include, to the extent possible, the identification of each Individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, used, or disclosed during the Breach in addition to the information required in Section V. In addition, Business Associate shall provide the Covered Entity with any other available information that the Covered Entity is required to include in the notification to the individual under 45 CFR §164.404(c); and
 - 2.16 To the extent Business Associate is to carry out one or more of the Covered Entity's obligations under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligations.

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

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

SECTION IV – NOTICE OF PRIVACY PRACTICES

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

SECTION V – BREACH NOTIFICATION REQUIREMENTS

- 5.1 With respect to any Breach, the Covered Entity shall notify each individual whose Unsecured PHI has been, or is reasonably believed by the Covered Entity to have been, accessed, acquired, used, or disclosed as a result of such Breach, except when law enforcement requires a delay pursuant to 45 CFR §164.412. This notice shall be:
- a. Without unreasonable delay and in no case later than 60 calendar days after discovery of a Breach.
 - b. By notice in plain language including and to the extent possible:
 - 1) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
 - 2) A description of the types of Unsecured PHI that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);

- 3) Any steps Individuals should take to protect themselves from potential harm resulting from the Breach;
 - 4) A brief description of what the Covered Entity and/or Business Associate involved is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against any further Breaches; and,
 - 5) Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, web site, or postal address.
- c. By a method of notification that meets the requirements of 45 CFR §164.404(d).
 - d. Provided notice to the media when required under 45 CFR §164.406 and to the Secretary pursuant to 45 CFR §164.408.
- 5.2. Business Associate shall promptly provide any information requested by Covered Entity to provide the information described in Section 5.1.

SECTION VI – TERM AND TERMINATION

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

continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to Electronic PHI to prevent use or disclosure of the PHI, for as long as the Business Associate retains the PHI.

SECTION VII – GENERAL PROVISIONS

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

(Signature Page for QSOBAA Follows)

SIGNATURE PAGE FOR QUALIFIED SERVICE ORGANIZATION BUSINESS ASSOCIATE AGREEMENT

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

Business Associate

Covered Entity

CATHOLIC COMMUNITY SERVICES OF WESTERN WASHINGTON

CLACKAMAS COUNTY



Authorized Signature

4/28/2020

Date

Richard Swift

Date

Health, Housing and Human Services

Mary Stone-Smith Vice President

Name / Title (Printed)

EXHIBIT G SCOPE OF WORK

Statement of Work:

Contractor shall provide Crisis and Acute Transition Services (CATS) to children who meet the eligibility criteria listed below. Contractor shall provide crisis and transition planning in a natural setting where children and youth remain connected with family and other community supports. Services provided shall allow a child to remain in the community as an alternative to inpatient hospitalization or sub-acute admission.

To be eligible for services under this Contract, children and youth must meet all of the following criteria:

1. Youth from birth to 18 years of age;
2. Youth must present to the Emergency Department at Providence Willamette Falls Medical Center, Providence Milwaukie Hospital or Clackamas County Mental Health Center (Clackamas MHC) in psychiatric crisis regardless of insurance coverage or lack thereof;
3. Youth must have a qualifying/covered DSM V diagnosis which is the focus of the needed mental health treatment;
4. Youth must present with a primary concern that is not due to:
 - a. Placement issues related to abuse,
 - b. Neglect or caregiver incapacity/behavior;
 - c. Substance use/abuse or intoxication;
 - d. Developmental disability;
 - e. Medical causes.
5. Assessing team must have determined that CATS is the best option because:
 - a. The youth cannot be adequately served by other community resources (i.e. primary care clinics, substance abuse treatment programs, or other community resources); AND
 - b. Less restrictive levels of care have been explored, including increasing the intensity of treatment, and demonstrated to be less likely to be effective, more intrusive, unavailable or too dangerous; AND
6. Crisis Stabilization services are likely to alleviate symptoms and/or improve functioning.
7. Youth must be medically stable.
8. Youth must be in crisis as defined by at least one of the following:
 - a. Youth meets medical necessity criteria for hospitalization and is being diverted;
 - b. Youth meets medical necessity criteria for subacute or residential treatment; and
 - c. Family prefers to divert subacute/residential placement; OR
 - d. The youth has been referred, but no bed is open, and the family is willing to explore community-based supports as an alternative to restrictive care;
 - e. Youth demonstrates a clear risk of harm to self or others through a current plan with intent; OR
 - f. Current ideation with a history of attempts and/or hospitalizations.
9. Youth demonstrates dangerous assaultive or other uncontrolled behavior, including extensive damage to property, not due to substance abuse.
10. Youth demonstrates inability to provide for basic needs, safety and welfare.
11. Youth demonstrates an acute deterioration in mental health functioning leading to an exacerbation of other medical conditions.
12. Youth is a high utilizer of emergency department services with at least two visits in the past 30 days.
13. Family is refusing to take the youth home because they do not feel able to ensure the youth's safety with their current supports (not due to unwillingness to be a placement option for the youth).

Contractor's CATS Team shall work flexible hours and be available twenty-four (24) hours a day, including evenings and weekends, to meet a family's needs and actively work toward a less intensive treatment option. Services are intended to be short term (30-45 days in length), and shall include:

1. Assessment and safety planning;
2. Brief, solution-focused Individual and family therapy;
3. Psychiatric care;
4. Case management;
5. Care coordination.

Contractor shall provide services that:

1. Are flexible and tailored in frequency, intensity, type and duration to meet the individual child and family's needs;
2. Are culturally responsive, when appropriate or requested;
3. Are provided creatively, with attention to what is needed to safely maintain the child in the community setting, and may include flexible services such as support at the school, parent coaching, etc.; and
4. Reflect the philosophy of families as equal partners and insure family involvement and participation in all phases of assessment, treatment planning and the child's treatment by documentation in the clinical record.

Contractor shall work to transition services back to the client's existing outpatient treatment provider. If client does not have an outpatient provider or wishes to choose a new provider, Contractor shall work closely with the client and caregiver to identify and transition services to an outpatient provider. Contractor shall provide case management, co-therapy sessions, care coordination, and treatment planning during the term of service. Contractor shall only serve a maximum of ten (10) youth at any given time.

Contractor shall respond to the request for services at Providence Willamette Falls Medical Center or Providence Milwaukie Hospital emergency departments, or Clackamas MHC. Contractor's staff shall be available to meet with a youth and conduct an assessment 24 hours a day, 7 days a week, including evenings and weekends.

Contractor shall manage utilization throughout the authorization period to ensure that the client is receiving services of the appropriate type and intensity that are clinically indicated and medically necessary. Crisis and Acute Transition Services will be authorized 30-45 days at a time, with services continuing until the outcomes of intervention are met. Contractor shall actively work on transitioning the child to the most clinically appropriate level of ongoing mental health care.

Contractor shall have a policy and procedure on family involvement that includes specific supports to family members that address and prevent barriers to family involvement.

Reporting Requirements

- Contractor shall submit encounters to County's Third Party Administrator, Performance Health Technology, Ltd. (PH Tech) for all services provided under this contract.
- All Individuals receiving MHS 08 Services with funds provided through this Contract must be enrolled and that Individual's record maintained in the Measures and Outcomes Tracking System (MOTS) as specified in OHA's MOTS Reference Manual, located at: <http://www.oregon.gov/OHA/HSD/AMH-MOTS/pages/resource.aspx>, and the Who Reports in MOTS Policy.
- Incident Reporting: Clackamas County BHD defines a reportable incident as an event in which an individual is believed to have been abused, endangered, or significantly harmed. A reportable incident may include, but is not limited to, any serious incident that presents a risk to health and safety and may be a result of staff action or inaction, incidents between individuals, incidents that

occur on passes, or incidents of self-harm where medical attention is necessary. Any such incident involving a client that occurs on the Contractor's premise, with Contractor staff, or during the course of treatment by the Contractor must be reported.

Examples of reportable incidents include:

- Seclusion and/or restraint resulting in physical injury
- Runaway from program or while on pass
- Medication error, which a reasonable person would conclude might result in a death, serious injury or hospitalization. {Notes: medication non-compliance does not have to be reported unless there is a resulting reportable event; medications missed while hospitalized does not have to be reported}
- ***Severe property damage***
- ***Serious injury resulting in medical attention***
- ***Significant suicide attempt resulting in medical attention***
- ***Death of a client/resident***
- ***Death or serious injury of another individual caused by the client/resident***
- ***Physical attack on another individual resulting in a physical injury***
- ***Mandatory reporting event***
- ***Allegation of abuse by program staff {See OAR 407-045-0290(5)}***

Procedure

- A. **Items above in bold, italicized lettering require immediate notification by phone to the Program Supervisor when such an incident occurs.**
- B. Contractor must send via secure email a copy of the incident report within twenty-four (24) hours, using the following address:

Secure email: BH-ProgramSupportRequests@co.clackamas.or.us

Staff Standards:

Contractor shall complete the following for all staff:

- A successful criminal history records check through the State of Oregon Background Check Unit (BCU) compliant with ORS Chapter 181 and OAR 407-007-0000 to OAR 407-007-0370.
- Positive clearance through the General Services Administration System for Award Management (SAM) at time of hire and monthly thereafter; and
- Positive clearance through the Office of Inspector General's (OIG) List of Excluded Individuals/Entities at time of hire and monthly thereafter.
- Review appropriate education and academic degrees;
- Review licenses or certificates, as required;
- Review relevant work history or qualifications;
- Document and certify that the staff's education, experience, competence, and supervision are adequate to permit the staff to perform the assigned duties.

County will provide technical assistance to Contractor on exclusion process through SAM and OIG, upon which time, the County will delegate to the Contractor the responsibility of exclusion checks. County may review Contractor's adherence to exclusion checks during routine contract compliance monitoring.

Contractor shall not permit any person to provide services under this Contract if that person is listed on the non-procurement portion of the General Service Administration's SAM in accordance with Executive Orders No. 12549 and No. 12689, "Debarment and Suspension" (2 CFR Part 180).

In addition, Contractor shall not permit any person to provide services under this Contract who has been terminated from the Division of Medical Assistance Program or excluded as Medicare/Medicaid providers by the Centers for Medicare and Medicaid Services or who are subject to exclusion for any lawful conviction by a court for which the provider could be excluded under 42 CFR 1001.101 “Program Integrity – Medicare and State Health Care Programs Subpart B”.

If Contractor is unable to adhere with requirements listed, Contractor shall communicate directly with the Behavioral Health Division’s Child Care Management Program Supervisor with a plan for meeting contract requirements.



DAN JOHNSON
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT
DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD OREGON CITY, OR 97045

Board of County Commissioners
Clackamas County

Members of the Board:

Authorization to Purchase Quantity 15 Wavetronix Advance 200-E Extended Range Sensor Systems for the Department of Transportation and Development

Purpose/Outcomes	Approval to purchase Qty 15 Wavetronix Advance 200-E Extended Range Sensor Systems for the Department of Transportation and Development
Dollar Amount and Fiscal Impact	The contract amount is not to exceed \$209,019.44.
Funding Source	Clackamas County Department of Transportation and Development Department Funds
Duration	N/A
Previous Board Action	N/A
Strategic Plan Alignment	Safety Improvements at signalized intersections identified in CRF Safety Projects
Counsel Review	N/A
Contact Person	Bikram Raghubansh, Civil Engineer Senior, 503-742-4706

Background:

The Department of Transportation has requested that the Clackamas County Procurement Division purchase fifteen (15) Wavetronix Advance 200-E Extended Range Sensor Systems from Advanced Traffic Products.

These units will provide safety improvements at signalized intersections that have been identified in CRF Safety Projects. The combination of new radar sensors and new Advance Traffic Controllers (ATC) will help implement an advanced dilemma-zone detection system and enhance safety at signalized intersections by adjusting signal timing based on vehicle classification and vehicle speed.

Procurement Process:

Approval of this purchase is being requested under the Local Contract Review Board Rule C-046-0400, Authority of Cooperative Procurements. The purchase will be made off cooperative contract # 04616 with Washington State Cooperative Purchasing Agreement through Advanced Traffic Products.

Recommendation:

Staff respectfully recommends that the Board approve this purchase.

Sincerely,

Mike Bezner,
Assistant Director of Transportation

Placed on the BCC Agenda May 14, 2020 by Procurement and Contract Services

Purchase Approved by Chair _____ Date _____



Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of Goods and Services Contract with Potters Industries LLC,
to provide Type II Glass Traffic Beads for Clackamas County**

Purpose/ Outcomes	Execution of a contract between the Department of Transportation and Development, Transportation Maintenance, and Potters Industries LLC, for type II glass traffic beads applied to striping paint for reflectivity on County roads.
Dollar Amount and Fiscal Impact	\$150,000 annually. Total contract value from 2020, including optional renewals through expiration is, \$750,000.
Funding Source	Transportation Maintenance, 215-7433-00-424714
Duration	June 30, 2025
Previous Board Action	N/A
Strategic Plan Alignment	1. These materials help create and maintain safer county roads for all users, and keep our striping crews supplied through multiple seasons. 2. These materials will also help DTD maintain required MUTCD standards for reflectivity in our roadways.
Counsel Review	April 28, 2020; AN
Procurement Review	1. Was the item processed through Procurement? yes <input checked="" type="checkbox"/> no <input type="checkbox"/> 2. If no, provide brief explanation:
Contact Person	Ryan Hixson, Transportation Maintenance Supervisor - 503-650-3205

BACKGROUND:

Transportation Maintenance applies and maintains road striping for the safety of those using County roads. It is vitally important that the County develop an agreement and maintain a supply of reflective beads to apply with its striping paint. Due to the short dry season in which the County operates, delivery times are crucial to the application of striping, and maintaining a highly reflective surface for drivers. The Clackamas County Transportation Maintenance Division maintains local roadways, which utilize various materials to ensure regulatory compliance requirements and road safety. Material consumption varies upon changes in traffic, weather, and process control demands. This specification covers glass beads to be dropped or sprayed upon longitudinal pavement markings so as to produce a reflectorized pavement marking.

PROCUREMENT PROCESS:

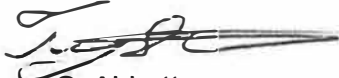
This project was advertised in accordance with ORS 279B and LCRB Rules on February 19, 2020. Bids were publically opened March 18, 2020. The County received three (3) proposals

from Brightlands Tech, Rodda Paint and Potters Industries LLC. Potters Industries LLC bid was chosen as most complete and comprehensive and was awarded the Contract through June 30, 2025.

RECOMMENDATION:

Staff respectfully recommends that the Board of County Commissioners of Clackamas County approve and execute the Contract between the Department of Transportation and Development and Potters Industries LLC, for the type II glass traffic beads.

Respectfully submitted,



Terry S. Abbott
Transportation Operations Manager
Transportation Maintenance Division

Placed on the Agenda of May 14, 2020 by the Procurement Division



CLACKAMAS COUNTY
GOODS AND SERVICES CONTRACT
Contract #2779

This Goods and Services Contract (this “Contract”) is entered into between **Potters Industries, LLC** (“Contractor”), and Clackamas County, a political subdivisions of the State of Oregon (“County”) on behalf of Department of Transportation and Development for the purposes of providing Type II glass traffic beads.

I. TERM

This Contract shall become effective upon signature of both parties and shall remain in effect until **June 30, 2023** with the option for two (2) additional one (1) year renewals thereafter subject to the mutual agreement of the parties. This Contract and any amendments to this Contract will not be effective until approved in writing by an authorized representative of the Board of County Commissioners of Clackamas County. This Contract supersedes and cancels any prior contracts between the parties hereto for similar services.

II. SCOPE OF WORK

This Contract covers the Scope of Work (the “Work”) as described in ITB #2020-18 Type II Glass Traffic Beads, issued on February 19, 2020, attached and hereby incorporated by reference as Exhibit “A.” This Contract consists of the following documents which are listed in descending order of precedence and are attached and incorporated by reference, this Contract, Exhibit “A”, and the Contractor’s Quote attached and hereby incorporated by reference as Exhibit “B.” Work shall be performed in accordance with a schedule approved by the County. The Contractor shall meet the highest standards prevalent in the industry or business most closely involved in providing the appropriate goods or services. The County’s Representative for this contract is: Ryan Hixson.

III. COMPENSATION

- 1. PAYMENT.** The County agrees to compensate the Contractor on a fixed fee basis as detailed in this Contract. The maximum annual compensation authorized under this Contract shall not exceed **one hundred fifty thousand dollars (\$150,000.00)** and the total Contract compensation, including any optional one-year renewals, shall not exceed **seven hundred fifty thousand dollars (\$750,000.00)**.

To account for material price fluctuations associated with the production of Type II glass traffic beads, Contractor may request pricing changes (increase or decrease) once a year, between March 1-10 of each year of the Contract. A request may not be submitted prior to March 2021. The County will not consider requests not received during the above referenced request periods. A request must be accompanied by proof of the material price changes and impact to Contractor’s ability to provide the Type II glass traffic beads at the rates set forth herein. Any proposed adjustment to the price under this Contract is contingent upon execution of an amendment, in writing, on terms acceptable to both parties and, to the extent the price increases, appropriation of sufficient funds, as determined by the County in its sole discretion, to permit the County to perform under the Contract.

- 2. TRAVEL EXPENSE REIMBURSEMENT.** Authorized: Yes No

If travel expense reimbursement is authorized in this Contract, such expenses shall only be reimbursed at the rates in the County Contractor Travel Reimbursement Policy, hereby incorporated by reference, in effect at the time of the expense is incurred.

3. INVOICES. Invoices submitted for payment in connection with this Contract shall be properly documented and shall indicate pertinent County contract and/or purchase order numbers. All charges shall be billed monthly (unless a different payment period is outlined in Exhibit A) and will be paid net thirty (30) days from receipt of invoice and shall be subject to Oregon Revised Statute (“ORS”) 293.462. 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. Invoices shall be submitted to the County Representative at: rhixson@clackamas.us or via mail at 902 Abernathy Road, Oregon City, Oregon 97045.

IV. CONTRACT PROVISIONS

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, which includes any hazardous, toxic, or dangerous substance, waste, or material that is the subject of environmental protection legal requirements or that becomes regulated under any applicable local, state or federal law, including but not limited to the items listed in the United States Department of Transportation Hazardous Materials Table (49 CFR §172.101) or designated as hazardous substances by Oregon Administrative Rules, Chapter 437, or the United States Environmental Protection Agency (40 CFR Part 302), and any amendments thereto. Upon County's request, Contractor shall immediately provide 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 their 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 the 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; 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.

10. INSURANCE. 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. Contractor shall provide insurance as indicated below:

A. COMMERCIAL GENERAL LIABILITY

The Contractor agrees to furnish the County evidence of commercial general liability insurance with a combined single limit of not less than \$1,000,000 for each claim, incident, or occurrence,

with an aggregate limit of \$2,000,000 for bodily injury and property damage for the protection of the County, its officers, elected officials, agents, and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof, in any way related to this Contract. The general aggregate shall apply separately to this project / location. The County, at its option, may require a complete copy of the above policy.

B. AUTOMOBILE LIABILITY

The Contractor agrees to furnish the County evidence of business automobile liability insurance with a combined single limit of not less than \$1,000,000 for bodily injury and property damage for the protection of the County, its officers, elected officials, agents, and employees against liability for damages because of bodily injury, death or damage to property, including loss of use thereof in any way related to this Contract. The County, at its option, may require a complete copy of the above policy.

C. Contractor shall provide County a certificate of insurance naming the Clackamas County and its officers, elected officials, agents, and employees as an additional insured. If Contractor's insurance policy does not include a blanket endorsement for additional insured status when/where required by written contract (as required in this Contract), the insurance, shall include Clackamas County and its officers, elected officials, agents, and employees as expressly scheduled additional insured. Use CG 20 10 or its equivalent. Such insurance shall provide sixty (60) days written notice to the County in the event of a cancellation or material change and include a statement that no act on the part of the insured shall affect the coverage afforded to the County under this insurance. This policy(s) shall be primary insurance with respect to the County. Any insurance or self-insurance maintained by the County shall be excess and shall not contribute to it.

D. If the Contractor has the assistance of other persons in the performance of this Contract, and the Contractor is a subject employer, the Contractor agrees to qualify and remain qualified for the term of this Contract as an insured employer under ORS 656. The Contractor shall maintain employer's liability insurance with limits of \$100,000 for each accident, \$100,000 per disease for each employee, and \$500,000 each minimum policy limit.

E. If any other required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of this Contract for a duration of thirty-six (36) months or the maximum time period the Contractor's insurer will provide "tail" coverage as subscribed, whichever is greater, or continuous "claims made" liability coverage for thirty-six (36) months following the contract completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided it's retroactive date is on or before the effective date of this Contract.

F. There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 60 days written notice by the Contractor to the County. This policy(s) shall be primary insurance with respect to the County. Any insurance or self-insurance maintained by the County shall be excess and shall not contribute to it.

G. Contractor shall require that all of its subcontractors of any tier provide insurance coverage (including additional insured provisions) and limits identical to the insurance required of the Contractor under this Contract, unless this requirement is expressly modified or waived by the County.

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, facsimile, or mailing the same, postage prepaid, to Contractor or County at the address or number set forth on the signature page 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 such communication or notice delivered by facsimile shall be deemed to be given when receipt of transmission is generated by the transmitting machine. To be effective against County, such facsimile transmission must be confirmed by telephone notice to County's supervising representative. 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 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 (1) Contractor has the power and authority to enter into and perform this Contract; (2) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (3) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards; and (4) 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.

- a. Performance Warranty. Contractor warrants that the goods provided to the County shall consistently perform according to the performance characteristics described in the Scope of Work.
- b. Service Warranty. Contractor warrants that the services provided herein to the County, if any, will be performed in a workmanlike manner and in accordance with the highest professional standards. Contractor's liability and County's remedy under this services warranty are limited to Contractor's prompt correction of such services, provided that written notice of such alleged defective services shall have been given by the County to Contractor. The County agrees to provide Contractor reasonable access to the goods for purposes of repair or replacement under this services warranty. Failure of Contractor to promptly correct problems pursuant to this Service Warrant shall be deemed a material breach of this Contract.

15. SURVIVAL. All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Sections of Section IV: 1, 6, 8, 11, 13, 14, 15, 21, and 31.

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 section and Sections 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, 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. TERMINATION. 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 are 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.

21. REMEDIES. (A) In the event of termination pursuant to 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 or objects or other tangible things needed to complete the work.

22. 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.

23. TIME IS OF THE ESSENCE. Contractor agrees that time is of the essence under this Contract.

24. 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.

25. 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.

26. 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.

27. 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 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. The Contractor shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract and failure to comply is a material breach that entitles County to exercise any rights and remedies available under this Contract including, but not limited to, termination for default. (D) The Contractor shall promptly, as due, make payment to any person or copartnership, 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.

28. DELIVERY. All deliveries shall be F.O.B. destination with all transportation and handling charges paid by the Contractor, unless specified otherwise in this Contract. Responsibility and liability for loss or damage shall remain with the Contractor until final inspection and acceptance, when responsibility shall pass to the County except as to latent defects, fraud and Contractor's warranty obligations.

29. INSPECTIONS. Goods and services furnished under this Contract will be subject to inspection and test by the County at times and places determined by the County. If the County finds goods and services furnished to be incomplete or not in compliance with the Contract, the County, at its sole discretion, may either reject the goods and services, require Contractor to correct any defects without charge, or negotiate with Contractor to sell the goods and services to the County at a reduced price, whichever the County deems equitable under the circumstances. If Contractor is unable or refuses to cure any defects within a time deemed reasonable by the County, the County may reject the goods and services and cancel the Contract in whole or in part. Nothing in this paragraph shall in any way affect or limit the County's rights as a Buyer, including the rights and remedies relating to rejection under ORS 72.6020 and revocation of acceptance under ORS 72.6080.

30. COOPERATIVE CONTRACTING. Pursuant to ORS 279A.200 to 279A.225, other public agencies may use this Contract resulting from a competitive procurement process unless the Contractor expressly noted in their proposal/quote that the prices and services are available to the County only. The condition of such use by other agencies is that any such agency must make and pursue contact, purchase order, delivery arrangements, and all contractual remedies directly with Contractor; the County accepts no responsibility for performance by either the Contractor or such other agency using this Contract. With such condition, the County consents to such use by any other public agency.

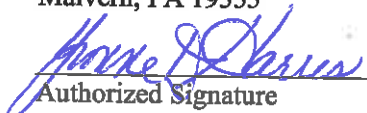
31. NO ATTORNEY FEES. In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Contract, each party shall be responsible for its own attorneys' fees and expenses

32. 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, 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.

Potters Industries, LLC
300 Lindenwood Drive
Malvern, PA 19355

Clackamas County

 April 28, 2020

Authorized Signature Date

Chair Date

Yvonne D. Harris, Contract Administrator

Name / Title (Printed)

Recording Secretary

801906-98

Oregon Business Registry #

Approved as to Form:

FLLC/Delaware

Entity Type / State of Formation

 04/28/2020

County Counsel Date

EXHIBIT A
ITB# 2020-18 TYPE II GLASS TRAFFIC BEADS
Issued February 19, 2020



**INVITATION TO BID
2020-18
ISSUE DATE: February 19, 2020**

Type II Glass Traffic Beads

**BID DUE DATE AND TIME
March 18, 2020 (2:00 PM, PST)**

SUBMITTAL LOCATION:

**Clackamas County Procurement Division
Attn: George Marlton, Chief Procurement Officer
Public Services Building
2051 Kaen Road
Oregon City, OR 97045**

Procurement@clackamas.us

1.0 GENERAL

1.01 SCHEDULE OF EVENTS:

Invitation to Bid Issue Date.....	February 19, 2020
Protest of Specifications Deadline	February 26, 2020
Request for Clarification or Change Deadline	March 11, 2020
Bid Due Date and Time.....	March 18, 2020
Deadline for Protest of Award	7 calendar days after date on Notice of Award letter
Anticipated Contract Begin Date	May 2020

This Schedule of Events is subject to change. Any changes will be made through the issuance of Written Addenda.

1.02 ISSUING OFFICE:

The Procurement Division of Clackamas County (“County”) is the issuing office and is the sole point of contact for this Invitation to Bid (“ITB”). All questions regarding this ITB should be directed to the Administrative Contact person identified below:

Name: Tralee Thorn
 Title: Procurement and Contract Analyst
 Telephone: (503) 742-5453
 Email: tthorn@clackamas.us

1.03 DEFINITIONS

As used in this ITB, the terms set forth below are defined as follows:

1. "Addenda" means an addition to, deletion from, a material change in, or general interest explanation of the ITB.
2. "Exhibits" means those documents which are attached to and incorporated as part of the ITB.
3. "Bid" means an offer, binding on the Bidder and submitted in response to an Invitation to Bid.
4. "Bidder" means an entity that submits a Bid in response to an ITB.
5. "Bid Due Date and Time" means the date and time specified in the ITB as the deadline for submitting Bids.
6. "Invitation to Bid" or “ITB” means a Solicitation Document for the solicitation of competitive, Written, signed and sealed Bids in which Specifications, price, and delivery (or project completion) are the predominant award criteria.
7. “LCRBR” means the Clackamas County Local Contract Review Board Rules found at: <http://www.clackamas.us/code/documents/appendixc.pdf>
8. "Responsible" means an entity that demonstrates their ability to perform satisfactorily under a contract by meeting the applicable standards of responsibility outlined in LCRBR C-047-0500.
9. "Responsive" means a Bid that has substantially complied in all material respects with the criteria outlined in the ITB.
10. “Written or Writing” means letters, characters, and symbols inscribed on paper by hand, print, type, or other method of impression intended to represent or convey particular ideas or meanings.

2.0 INTRODUCTION AND BACKGROUND

2.01 INTRODUCTION:

The Transportation Maintenance Division uses Type II glass beads in the striping paint to strip County roads. The department also contracts with cities within Clackamas County to stripe roads within their jurisdiction. In order to effectively work with traffic paint they purchase, they have specific requirements that the reflective traffic glass beads must meet. Clackamas County Department of Transportation and Development (“DTD”) is seeking Bids from vendors to provide the supply of reflective traffic glass beads and their delivery on an as-needed basis.

2.02 BACKGROUND:

Clackamas County Department of Transportation and Development applies and maintains road striping for the safety of those using County roads. It is vitally important that the County develop an agreement and maintain a supply of reflective beads to apply with its striping paint. Due to the short dry season in which the County operates, delivery times are crucial to the application of striping, and maintaining a highly reflective surface for drivers. The Clackamas County Road Department maintains local roadways which utilize various materials to ensure regulatory compliance requirements and road safety. Material consumption varies upon changes in traffic, weather, and process control demands. This specification covers glass beads to be dropped or sprayed upon longitudinal pavement markings so as to produce a reflectorized pavement marking.

3.0 SPECIFICATIONS / STATEMENT OF WORK

3.01 REQUIRED SPECIFICATIONS:

In order to qualify as a Responsive Bidder, the Bid needs to meet the required specifications per Exhibit A, attached and hereby incorporated by reference. Bids must include all freight FOB destination.

3.02 TERMS AND CONDITIONS:

County’s terms and conditions governing the purchase resulting from this ITB are included at Exhibit B, attached and hereby incorporated by reference.

4.0 BIDDER QUALIFICATIONS

4.01 MINIMUM QUALIFICATIONS:

In order to qualify as a Responsive Bidder, the Bidder needs to meet the minimum qualifications below:

Reserved

5.0 REQUIRED SUBMITTALS

5.01 SUBMISSION OF BID AND QUANTITY:

Complete Bids may be mailed to the below address or emailed to Procurement@clackamas.us. The subject line of the email must identify ITB# 2020-18 Type II Glass Traffic Beads. Bidders are encouraged to contact Procurement to confirm receipt of the Bid. The Bid, regardless of how it is submitted must contain all of the required information and must have signatures on the required forms and be received by the Closing Date and time indicated in Section 1.01 of the ITB.

Submit Bids (including all required documents) by 2:00 PM PT to:

Clackamas County Procurement Division
Attn: George Marlton, Chief Procurement Officer
Public Services Building
2051 Kaen Road
Oregon City, OR 97045

Late Bids will not be accepted.

5.02 **REQUIRED SUBMITTALS:**

It is the Bidder's sole responsibility to submit information in fulfillment of the requirements of this ITB. If pertinent information or required submittals are not included within the Bid, it may cause the Bid to be rejected.

Bidders should submit the following information:

- Description of how the goods or services offered specifically meet the required specifications described in Exhibit A.
- Exhibit C, Certifications, fully completed.
- Exhibit D, References, fully completed.
- Exhibit E, Bid Price Form, fully completed.

6.0 EVALUATION AND AWARD

6.01 **EVALUATION:**

Bids will be evaluated to determine the lowest Responsive Responsible Bidder based upon the ITB, Exhibits and Addenda. County may engage in any of the processes identified in the applicable LCRBR to determine the Contract award.

6.02 **BEST AND FINAL OFFER:**

In accordance with LCRBR C-047-0261, the County may request best and final offers from those Bidders determined by County to be reasonably viable for contract award. However, County reserves the right to award a contract on the basis of initial bid received. Therefore, each bid should contain the Bidder's best terms from a price and technical standpoint. Following evaluation of the best and final offers, County may select for final contract negotiations/execution the offers that are most advantageous to County, considering cost and the evaluation criteria in this ITB.

6.03 **INTERGOVERNMENTAL COOPERATIVE PROCUREMENT STATEMENT:**

Pursuant to ORS 279A and LCRBR, other public agencies shall have the ability to purchase the awarded goods and services from the awarded contractor(s) under terms and conditions of the resultant contract. Any such purchases shall be between the contractor and the participating public agency and shall not impact the contractor's obligation to County. Any estimated purchase volumes listed herein do not include other public agencies and County makes no guarantee as to their participation. Any proposer, by written notification included with their proposal, may decline to extend the prices and terms of this solicitation to any and/or all other public agencies. County grants to any and all public serving governmental agencies, authorization to purchase equivalent services or products described herein at the same submitted unit bid price, but only with the consent of the contractor awarded the contract by the County.

6.04 **INVESTIGATION OF REFERENCES:**

County reserves the right to investigate and to consider the references and the past performance of any Bidder with respect to such things as its performance or provision of similar goods or services, compliance with specifications and contractual obligations, and its lawful payment of suppliers,

subcontractors, and workers. County further reserves the right to consider past performance, historical information and facts, whether gained from the Bid, interviews, references, County or any other source. County may postpone the award or execution of the Contract after the announcement of the notice of intent to award in order to complete its investigation.

7.0 INSTRUCTIONS TO BIDDERS

7.01 APPLICABLE STATUTES AND RULES:

This ITB is subject to the applicable provisions and requirements of the Oregon Revised Statutes, and the LCRBR.

7.02 MANUFACTURER'S NAMES AND APPROVED EQUIVALENT:

Unless qualified by the provision "NO SUBSTITUTE" any manufacturers' names, trade name, brand names, information and/or catalogue numbers listed in a specification are for information and not intended to limit competition. Bidders may offer any brand for which they are an authorized representative, which meets or exceeds the specification for any item(s). If Bids are based on equivalent products, indicate in the Bid form the manufacturers' name and number. Bidders shall submit with their Bid, sketches, and descriptive literature, and/or complete specifications. Reference to literature submitted with a previous Bid will not satisfy this provision. Bidders shall also explain in detail the reason(s) why the proposed equivalent will meet the specifications and not be considered an exception thereto. Bids, which do not comply with these requirements, are subject to rejection. Bids lacking any written indication of intent to provide an alternate brand will be received and considered in complete compliance with the specification as listed in the ITB.

7.03 REQUEST FOR CLARIFICATION OR CHANGE:

Requests for clarification or change of the ITB must be in Writing and received by the issuing office no later than the Request for Clarification or Change Deadline as specified in the Schedule of Events. Such requests for clarification or change must include the reason for the Bidder's request. County Tech will consider all timely requests and, if acceptable to County, amend the ITB by issuing an Addendum. An Addendum will be posted at www.clackamas.us/bids. Envelopes or e-mails containing requests should be clearly marked as a Request for Clarification or Change and include the ITB Number and Title.

7.04 PROTESTS OF THE BID/SPECIFICATIONS:

Protests must be in accordance with LCRBR C-047-0730. Protests of Specifications must be received in writing on or before 5:00 p.m. (Pacific Time), on the date indicated in the Schedule of Events, or within three (3) business days of issuance of any addendum, at the Procurement Services Division address listed in Section 1 of this ITB. Protests may not be faxed. Protests of the ITB specifications must include the reason for the protest and any proposed changes to the requirements.

7.05 ADDENDA:

If any part of this ITB is changed, an addendum will be provided to Proposers that have provided an address to the Procurement Division for this procurement. It shall be Proposers responsibility to regularly check the Bids and Contract Information page at <http://www.clackamas.us/bids/> for any published Addenda or response to clarifying questions.

7.06 PREPARING AND SIGNATURE:

All Required Submittals must be Written and signed by an authorized representative with authority to bind the Bidder. Signature certifies that the Bidder has read, fully understands, and agrees to be bound by the ITB and all Exhibits and Addenda to the ITB.

- 7.07 **PUBLIC RECORD:**
Upon completion of the ITB process, information in your Bid will become subject records under the Oregon Public Records Law. Only those items considered a “trade secret” under ORS 192.501(2), may be exempt from disclosure. If a Bid contains what the Bidder considers a “trade secret” the Bidder must mark each sheet of information as such. Only bona fide trade secrets may be exempt and only if public interest does not require disclosure.
- 7.08 **MODIFICATION:**
Prior to submittal, Bidders should initial modifications or erasures in ink by the person signing the Bid. After submittal but prior to the Bid Due Date and Time, Bids may be modified by submitting a Written notice indicating the modifications and a statement that the modification amends and supersedes the prior Bid. After the Bid Due Date and Time, Bidders may not modify their Bid.
- 7.09 **WITHDRAWALS:**
A Bidder may withdraw their Bid by submitting a Written notice to the issuing office identified in this ITB prior to the Bid Due Date and Time. The Written notice must be on the Bidder’s letterhead and signed by an authorized representative of the Bidder. The Bidder, or authorized representative of the Bidder, may also withdraw their Bid in person prior to the Bid Due Date and Time, upon presentation of appropriate identification and evidence of authority to withdraw the Bid satisfactory to County.
- 7.10 **LATE SUBMITTALS:**
Bids and Written notices of modification or withdrawal must be received no later than the Bid Due Date and Time. County may not accept or consider late Bids, modifications, or withdrawals except as permitted in LCRBR C-047-0330(6).
- 7.11 **BID OPENING:**
Bids will be opened immediately following the Bid Due Date and Time at the Submittal Location. Bidder may attend the Bid opening. Only the names of the Bidders submitting Bids and base bid price will be announced. No other information regarding the content of the Bids will be available.
- 7.12 **BIDS ARE OFFERS:**
The Bid is the Bidder’s offer to enter into a contract pursuant to the terms and conditions specified in the ITB, its Exhibits, and Addenda. The offer is binding on the Bidder for one hundred twenty (120) days. County’s award of the Contract constitutes acceptance of the offer and binds the Bidder. The Bid must be a complete offer and fully Responsive to the ITB.
- 7.13 **CONTINGENT BIDS:**
Bidder shall not make its Bid contingent upon County’s acceptance of specifications or contract terms that conflict with or are in addition to those in the ITB, its Exhibits, or Addenda.
- 7.14 **RIGHT TO REJECT:**
County may reject, in whole or in part, any Bid not in compliance with the ITB, Exhibits, or Addenda, if upon County’s Written finding that it is in the public interest to do so. County may reject all Bids for good cause, if upon County’s Written finding that it is in the public interest to do so. Notification of rejection of all Bids, along with the good cause justification and finding of public interest, will be sent to all who submitted a Bid.
- 7.15 **AWARDS:**
County reserves the right to make award(s) by individual item, group of items, all or none, or any combination thereof. County reserves the right to delete any item from the award when deemed to be in the best interest of County.

7.16 LEGAL SUFFICIENCY REVIEW:

Prior to execution of any Contract resulting from this ITB, the Contract may be reviewed for legal sufficiency by a qualified attorney for County pursuant to the applicable Oregon Revised Statutes and County Policy. Legal sufficiency review may result in changes to the terms and conditions specified in the ITB, Exhibits, and Addenda.

7.17 BID RESULTS:

A notice of intent to award containing the Bid results will be issued to all Bidders. The Bid file will be available for Bidder's review during the protest period at the Procurement Division. Bidders must make an appointment with the issuing office to view the Bid file. After the protest period, the file will be available by making a Public Records Request to County through the Procurement Division.

7.18 BID PREPARATION COST:

County is not liable for costs incurred by the Bidder during the ITB process.

7.19 BID CANCELLATION:

If an ITB is cancelled prior to the Bid Due Date and Time, all Bids that may have already been received will be returned to the Bidders. If an ITB is cancelled after the Bid Due Date and Time or all Bids are rejected, the Bids received will be retained and become part of County's permanent Bid file.

7.20 COLLUSION:

By responding, the Proposer states that the proposal is not made in connection with any competing Proposer submitting a separate response to the ITB, and is in all aspects fair and without collusion or fraud. Proposer also certifies that no officer, agent, elected official, or employee of County has a pecuniary interest in this Proposal.

7.21 NONDISCRIMINATION:

The successful proposer agrees that, in performing the work called for by this ITB and in securing and supplying materials, contractor will not discriminate against any person on the basis of race, color, religious creed, political ideas, sex, age, marital status, sexual orientation, gender identity, veteran status, physical or mental handicap, national origin or ancestry, or any other class protected by applicable law.

7.22 PROTEST OF CONTRACTOR SELECTION, CONTRACT AWARD:

An eligible Bidder who feels adversely affected or aggrieved may submit a protest within seven (7) calendar days after County issues a notice of intent to award a Contract. The protest must be clearly identified as a protest, identify the type and nature of the protest, and include the ITB number and title. The rules governing protests are at LCRBR C-047-0740.

EXHIBIT A REQUIRED SPECIFICATIONS
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A. General Requirements

- Marking: Each shipment shall be identified as to product, grade, net weight, name of manufacturer and brand name.
- Removal of Unsatisfactory Materials: If the material does not meet the requirements of the appropriate County Standard, or is not satisfactory to the department staff (or appointed representative) the vendor shall remove the material from the premises at the purchaser’s request and replace it with a like amount of satisfactory material, or a price adjustment may be agreed upon between the purchaser and the vendor.
- Vendors and chemicals shall comply with all applicable rules and regulations of the State of Oregon and all other authorities having jurisdiction. Deliveries will be within a reasonable time, relative to the placement of an order. Expected response from date of order is ten (10) days.
- Delivery times shall be coordinated with Clackamas County, or a Clackamas County representative, at the time of placing an order.
- The spherically-shaped beads shall be clean, smooth, transparent glass, free from any pits, discoloration or excessive air bubbles.
- The materials requested shall test within the gradation requirements from the ASTM D1214 testing procedure, shown in TABLE 1.
- Clackamas County reserves the right to conduct random sampling of pre-approved, certified materials for testing and to perform random audits of test reports.
- The glass beads shall have a minimum refractive index of 1.5.
- The glass beads must meet spherical standards of 75% from the ASTM 1155 testing procedure A. which can be found at the attached link: <https://www.astm.org/Standards/D1155.htm>

B. Table 1

U.S. Sieve Size	Passing Minimum %	Passing Maximum %
16	100	N/A
20	90	100
30	50	75
40	15	45
50	0	15
80	0	5

C. Delivery and Response Time

Delivery will typically be Monday – Thursday between the hours of 7:00AM- 4:00PM PST, with volumes indicated at the time of order. **Expected delivery from date of order is fourteen (14) days.**

D. Delivery Location

Clackamas County Roads Traffic Department
 920 Abernethy Rd.
 Oregon City, OR 97045

E. Trucking and Offloading

Reflective beads must come in 2400 pound totes on a vendor truck, able to be offloaded by forklift. Offloading of bead totes may be made via vendor supplied forklift or co-op offload with County staff and County forklift.

The preference of the County is for the awarded contractor to have in-house trucking methods with minimal subcontractor trucking.

F. Warranties

The products supplied shall be warranted to be in complete compliance with the specifications and completely satisfactory for their intended use. Unsatisfactory items will be removed by the vendor from the premises at the purchaser's request and replaced with a like amount of satisfactory material, or a price adjustment may be agreed upon between the purchaser and the vendor.

G. Price Adjustments

Proposer(s) may request pricing changes (increase or decrease) once a year, between March 1-10 of each year of the contract. A request may not be submitted prior to March 2021. The County will not consider requests not received during the above referenced request periods. The County's intent is to ensure that it is paying competitive market rates for products.

EXHIBIT B
TERMS AND CONDITIONS FOR GOODS
PURCHASE ORDER TERMS AND CONDITIONS

Submission of a Bid in response to this ITB indicated Bidder's willingness to enter into a contract containing substantially the same terms (including insurance requirements) of the sample contract identified below. No action or response to the sample contract is required under this ITB. Any objections to the sample contract terms should be raised in accordance with Paragraphs 7.03 or 7.04 of this ITB, pertaining to requests for clarification or change or protest of the ITB/specifications, and as otherwise provided for in this ITB. This ITB and all supplemental information in response to this ITB will be a binding part of the final contract.

The applicable Sample Goods & Services Contract for this ITB can be found at:
<http://www.clackamas.us/bids/terms.html>.

Term of Contract:

The term of the contract shall be from the effective date through **June 30, 2023**, with the option for two (2) additional one (1) year renewals thereafter subject to the mutual agreement of the parties.

EXHIBIT C - CERTIFICATIONS
ITB #2020-18

By signature on this certification the undersigned certifies that they are authorized to act on behalf of the Bidder and that under penalty of perjury the undersigned will comply with the following:

SECTION I. OREGON TAX LAWS

The undersigned hereby certifies under penalty of perjury that the undersigned is authorized to act on behalf of Bidder and that Bidder is, to the best of the undersigned's knowledge, not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250 and ORS chapters 118, 314, 316, 317, 318, 321 and 323 and the elderly rental assistance program under ORS 310.630 to 310.706 and local taxes administered by the Department of Revenue under ORS 305.620.

SECTION II. AFFIRMATIVE ACTION

The undersigned hereby certifies that they have not discriminated against Minority, Women or Emerging Small Business Enterprises in obtaining any required subcontracts, pursuant to ORS 279A110.

SECTION III. COMPLIANCE WITH SOLICITATION

The undersigned agrees and certifies that they:

1. Have read, fully understands and agrees to be bound by the Invitation to Bid and all Exhibits and Addenda to the Invitation to Bid;
2. Are an authorized representative of the Bidder, that the information provided is true and accurate, and that providing incorrect or incomplete information may be cause for rejection of the Bid or Contract termination;
3. Will use recyclable products, unless prohibited in this ITB, to the maximum extent economically feasible in the performance of a contract if awarded.
4. Will furnish the designated item(s) and/or service(s) in accordance with the Invitation to Bid and the Contract; and

Resident Bidder, as defined in ORS 279A.120: Oregon Business Registry #: _____
 Non-Resident Bidder, Resident State: Pennsylvania

Company Legal Business Name (No DBA/ABN): Potters Industries, LLC

Authorized Signature:  Date: March 16, 2020

Name (Type or Print): Yvonne D. Harris Telephone: (610) 651-4714

Title: Contract Administrator Email: Yvonne.Harris@pottersbeads.com

Address, City, State, Zip: 300 Lindenwood Drive, Malvern, PA 19355

Oregon CCB# (if applicable): _____

Business Designation (check one):

- Corporation Partnership LLC Sole Proprietorship Non-Profit
 Minority Owned Women Owned Emerging Small Business

Oregon MWESB Certification Number: _____

Self-Identified Minority, Women or Emerging Small Business: Yes No

**EXHIBIT D
REFERENCES**

REFERENCE 1

Company: Gallatin County, Montana Contact Name: Erin Howard
Address: 205 Baxter Lane West Phone Number: 406-582-3250
City, State, Zip: Bozeman, MT 59718 E-Mail: Erin.Howard@gallatin.mt.gov
Goods or Services Provided: Glass Beads

REFERENCE 2

Company: Tulare County, CA Contact Name: Sandra Kinzel
Address: 2637 W. Burrel Ave, Suite 200 Phone Number: 559-205-1128
City, State, Zip: Visalia, CA 93291 E-Mail: SGKinzel@co.tulare.ca.us
Goods or Services Provided: Glass Beads

REFERENCE 3

Company: City of Bakersfield, CA Contact Name: John Williams
Address: 4101 Truxton Avenue Phone Number: 661-326-3154
City, State, Zip: Bakersfield, CA 93309 E-Mail: jowillia@bakersfieldcity.us
Goods or Services Provided: Glass Beads

EXHIBIT B
CONTRACTOR'S QUOTE

EXHIBIT E - BID PRICE FORM
ITB #2020-18

Bid pricing response must be FOB Destination and include all taxes, tariffs, and delivery costs.

Date: March 16, 2020

Pricing based on price per pound for the requested reflective glass beads: \$ 0.509

Price per 2400lbs tote: \$ 1,221.60

Delivery Time after Receipt of Purchase Order: 14 Days

Company: Potters Industries, LLC

Address, City, State, Zip: 300 Lindenwood Drive, Malvern, PA 19355

Contact Name: Telephone: Yvonne D. Harris / 610-651-4714

Contact Title: Contract Administrator

Email: Yvonne.Harris@pottersbeads.com

By: 
(Authorized Signature)

Title: Contract Administrator



Elizabeth Comfort
Finance Director, Interim

Department of Finance

Public Services Building
2051 Kaen Road, Suite 490 | Oregon City, OR 97045

May 14, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

FEMA 4499-DR-OR 2020 FEMA-State Agreement for the Coronavirus Disease

Purpose/Outcome	Approval to accept the grant award from the State of Oregon, by and through the Oregon Military Department for FEMA 4499-DR-OR (COVID-19) pass-through funding
Dollar Amount and Fiscal Impact	COVID-19 is ongoing; the dollar amount/fiscal impact is unknown at this time
Funding Source	Federal funding provided by FEMA and is administered by Oregon Emergency Management (OEM)
Duration	Effective January 20, 2020, and continuing
Previous Board Action	N/A
Strategic Plan Alignment	N/A
County Counsel Review	Reviewed and approved by County Counsel on 5/11/2020
Contact Person	Christa Bosserman-Wolfe, Deputy Director 503-742-5407 Michael Morasko, Senior Accountant 503-742-5435

BACKGROUND:

Federal funding in this agreement is provided by FEMA and is administered by OEM. Under the authority of Presidential Major Disaster Declaration FEMA 4499-DR-OR, OEM will provide Clackamas County reimbursement for eligible costs and activities necessary for emergency protective measures taken in response to the COVID-19 emergency during the period of January 20, 2020, and continuing. FEMA will contribute 75 percent of eligible project costs. Clackamas County is required to provide a 25 percent match.

Once this grant award is signed, Clackamas County Finance will begin working with OEM/FEMA to submit work activities, costs, and supporting documentation for reimbursement. This agreement is an open-ended award amount, and the value will be determined after coordination with FEMA/OEM. OEM has requested Clackamas County return the attached formal contract as soon as possible.

RECOMMENDATION:

Staff respectfully recommends that the Board of Commissioners accept this grant agreement

Respectfully submitted,

Christa Bosserman-Wolfe
Deputy Director, Finance

STATE OF OREGON
OFFICE OF EMERGENCY MANAGEMENT
INFRASTRUCTURE CONTRACT 4499-DR-OR

1.0 PARTIES TO THIS AGREEMENT

This Agreement is made and entered into by and between the State of Oregon, by and through the Oregon Military Department, Office of Emergency Management, hereinafter referred to as "OEM" and Clackamas County a political subdivision of the State of Oregon, hereinafter referred to as the "SUBRECIPIENT".

This Agreement shall be effective upon execution by the parties and receipt of any approvals required by law and shall terminate on the earlier of: (i) as provided in Section 17 of this Agreement, (ii) the end of the Agreement Period specified below or (iii) June 30, 2027.

WHEREAS the Nationwide Emergency Declaration issued by the President on March 13, 2020, as a result of Coronavirus Disease 2019 (COVID-19) beginning on January 20, 2020, and continuing, authorizes Department of Homeland Security, Federal Emergency Management Agency (FEMA), to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in the designated areas;

WHEREAS FEMA is specifically authorized to provide emergency protective measures (Category B) not authorized under other Federal statutes, including direct federal assistance, under the Public Assistance program at 75 percent federal funding; and

WHEREAS OEM is authorized by the 2020 FEMA-State Agreement for the Coronavirus Disease 2019 (COVID-19) to execute on behalf of the State of Oregon all necessary documents for public assistance, including approval of sub-grants and certification of claims;

THEREFORE, the Parties mutually agree to the following:

2.0 PURPOSE

Federal funding is provided by FEMA and is administered by OEM. Under the authority of Presidential Major Disaster Declaration FEMA 4499-DR-OR ("FEMA Declaration"), OEM is reimbursing the SUBRECIPIENT for those eligible costs and activities necessary for emergency protective measures taken to respond to the COVID-19 emergency during the period of January 20, 2020, and continuing, in the manner described herein and in accordance with the completed Project Worksheets sheets submitted by SUBRECIPIENT and approved by FEMA and OEM. The parties understand and agree that after the project(s) described in a Project Worksheet is reviewed and approved by FEMA and OEM and determined to be eligible for funding under the FEMA Declaration in terms of an eligible SUBRECIPIENT, project and amount, then the amount(s) set forth in the Project Worksheet will be transferred from FEMA to OEM for disbursement on a reimbursement basis as set forth in this Agreement. For any project(s) that SUBRECIPIENT seeks reimbursement for under the FEMA Declaration, SUBRECIPIENT shall obtain a completed, executed and approved Project Worksheet substantially in the form of the attached Exhibit B.

3.0 TIME OF PERFORMANCE

Activities payable under this Agreement and to be performed by the SUBRECIPIENT under this Agreement shall be those activities which occurred on or subsequent to the incident period defined in the FEMA-State Agreement and shall terminate upon completion of the project(s) approved by federal and state officials, including completion of close out and audit, all as detailed in the applicable FEMA application and Project Worksheet. This period shall be referred to as the "Agreement Period."

4.0 CLOSE-OUT

It shall be the responsibility of OEM to issue close-out instructions to the SUBRECIPIENT upon completion of the project(s).

5.0 FUNDING

OEM will administer the disaster assistance program and reimburse any eligible costs for eligible projects to the SUBRECIPIENT which are identified under the auspices of the Presidential Major Disaster Declaration FEMA-4499-DR-OR and in the Project Worksheet. It is understood that no final dollar figure is committed to at the time that this Agreement is executed, but that financial commitments will be made as Project Worksheets are completed in the field and projects are authorized by state and federal officials. Each Project Worksheet that is completed, signed by FEMA and SUBRECIPIENT, and approved by OEM will constitute a new agreement that consists of the terms and conditions set forth in this Agreement and the completed Project Worksheet. OEM's obligation to disburse funds under this Agreement is contingent upon receipt of sufficient funds under the FEMA Declaration and sufficient appropriation, limitation, allotment or other expenditure authorization to make the disbursement.

The parties understand that FEMA will contribute 75 percent of the eligible project costs identified in the Project Worksheet for any eligible project, that a Subrecipient allowance may be made at the end of a project, subject to FEMA approval of documentation submitted by OEM and as provided for in subsection 3 of Section 6.0 of this Agreement, and that no state funds are obligated for contribution under this Agreement.

The SUBRECIPIENT will commit and is responsible for providing the required 25 percent match to any eligible project costs identified in the Project Worksheet.

6.0 PAYMENTS

OEM, using funds granted for the purposes of the Presidential Major Disaster Declaration from FEMA and allocated by FEMA pursuant to the applicable Project Worksheet, shall issue payments to the SUBRECIPIENT as follows:

1. Small Projects:
 - a) Small Projects are eligible for funding up to an amount designated by FEMA as provided in 44 CFR 206.205(a). For FEMA-4499-DR-OR, that amount is \$131,100.
 - b) Payments are made for all small projects to the SUBRECIPIENT upon submission of a State of Oregon Disaster Assistance Payment Request to OEM, and the subsequent approval by OEM.
2. Large Projects

- a) Large Projects are eligible for funding in excess of the amount allowed for Large Projects, as provided in 44 CFR 206.205(b).
- b) Partial Payments: Partial payment of funds for costs already incurred on large projects may be made to the SUBRECIPIENT upon submission of a State of Oregon Disaster Assistance Payment Request, with appropriate supporting documentation, to OEM, upon approval by OEM.
- c) Final Payment: Final payment will be made upon submission by the SUBRECIPIENT of CERTIFICATION OF LARGE PROJECT COST, completion of project(s), completion of all final inspections by OEM, and final approval by FEMA. Final payment may also be conditioned upon a financial review, if determined necessary by OEM or FEMA. Adjustments to the final payment may be made following any audits conducted by the Oregon Secretary of State's Audits Division or the United States Inspector General's Office.

All payment requests shall be made on a State of Oregon Disaster Assistance Payment Request Form to OEM, which references the appropriate Project Worksheet (PW), and appropriate documentation as required.

3. Funding shall not exceed the total federal contributions eligible for the repair and restoration costs under this Presidential Major Disaster Declaration FEMA-4499-DR-OR and the amount(s) approved in the applicable PW. On Large Projects, OEM reserves the right to make any inspection prior to release of any payment or at any time during the duration of this Agreement.

7.0 RECORDS MAINTENANCE

The SUBRECIPIENT shall maintain books, records, documents, and other evidence and accounting procedures and practices, which sufficiently and properly reflect all direct costs of any nature expended in the performance of this Agreement. These records shall be subject at all reasonable times to inspection, review, or audit by OEM personnel, other personnel duly authorized by OEM, the Secretary of State's Audits Division or the United States Inspector General. The SUBRECIPIENT will retain all books, records, documents, and other material relevant to this Agreement for six years after date of final payment, or an extended period as established by FEMA in 2 CFR § 200.333.

8.0 PROPERTY/EQUIPMENT MANAGEMENT AND RECORDS CONTROL AND RETENTION OF RECORDS and REPORTING

1. Property/Equipment Management and Records Control. The Subrecipient agrees to comply with all requirements set forth in 2 CFR §200.333 for the active tracking and monitoring of property/equipment. Procedures for managing property/equipment, whether acquired in whole or in part with grant funds, until disposition takes place, will, at a minimum, meet the requirements set forth in 2 CFR §200.313, 314 and 329, and the following requirements:
 - a. All property/equipment purchased under this agreement, whether by the Subrecipient or a subcontractor, will be recorded and maintained in the Subrecipient's property/equipment inventory system.
 - b. The Subrecipient shall maintain property/equipment records that include: a description of the property/equipment, the manufacturer's serial

number, model number, or other identification number, the source of the property/equipment, including the, Project Worksheet number, Catalog of Federal Assistance Listing / CFDA number, who holds title; the acquisition date; the cost of the property/equipment and the percentage of Federal participation in the cost, the location, use and condition of the property/equipment, and any ultimate disposition data including the date of disposition and sale price of the property/equipment.

- c. A physical inventory of the property/equipment must be taken and the results reconciled with the property/equipment records, at least once every two years.
 - d. A control system must be developed to ensure adequate safeguards to prevent loss, damage or theft of the property/equipment. Any loss, damage or theft shall be investigated.
 - e. Adequate maintenance procedures must be developed to keep the property/equipment in good condition.
 - f. If the Subrecipient is authorized to sell the property/equipment, proper sales procedures must be established to ensure the highest possible return.
 - g. The Subrecipient shall pass on property/equipment management requirements that meet or exceed the requirements outlined above for all subcontractors, consultants and the Subrecipients who receive pass-through funding from this grant agreement.
2. Retention of Property/Equipment Records. Records for property/equipment shall be retained for a period of six years from the date of the disposition or replacement or transfer at the discretion of the awarding agency. Title to all property/equipment and supplies purchased with funds made available under the FEMA Public Assistance program shall vest in the Subrecipient agency that purchased the property/equipment, except as may be provided in 2 CFR §200.313.

9.0 AUDITS

If Subrecipient expends \$750,000 or more from all federal funding sources during its fiscal year, Subrecipient must submit an organization-wide financial and compliance audit report. The audit must be performed in accordance with the requirements of Government and Accountability Office's (GAO) Government Auditing Standards, located at <http://www.gao.gov/govaud/ybk01.htm>, and the requirements of Subpart F of 2 C.F.R. Part 200.f. The SUBRECIPIENT is to procure, at its own cost, audit services based on the following guidelines:

As applicable, the SUBRECIPIENT must ensure the audit is performed in accordance with Generally Accepted Accounting Principles and Generally Accepted Government Auditing Standards developed by the Comptroller General; and all state and federal laws and regulations governing the program.

The SUBRECIPIENT must prepare a Schedule of Financial Assistance for federal funds that includes: Grantor name (OEM), program name, federal catalog number (Federal

Listings number-97.036), total award amount, beginning balance, current year revenues, current year expenditures and ending balance. With the submission and completion of each Project Worksheet OEM is required by 2 CFR 200.331 (pursuant to FEMA Public Assistance Program Interim Guidance on 2 C.F.R. Part 200) to complete the information set forth in Exhibit A to this Agreement. SUBRECIPIENT shall submit with each Project Worksheet any information requested by OEM that is necessary to accurately complete Exhibit A.

The SUBRECIPIENT shall maintain records and accounts in such a way as to facilitate OEM's audit requirements, and shall ensure that Subcontractors also maintain records which are auditable. The SUBRECIPIENT is responsible for any audit exceptions incurred by itself or by its Subcontractors. OEM reserves the right to recover from the SUBRECIPIENT disallowed costs resulting from the final audit.

The SUBRECIPIENT shall send the audit report to OEM's Project Administrator as soon as it is available, but no later than nine months after the end of the SUBRECIPIENT's fiscal year in which SUBRECIPIENT receives any funds under this Agreement. Responses to previous management findings and disallowed or questioned costs shall be included with the audit report. The SUBRECIPIENT will respond to OEM's requests for information or corrective action concerning audit issues within 30 days of the request.

The SUBRECIPIENT shall include these requirements in any subcontracts.

10.0 RECOVERY OF FUNDS

In the event that the SUBRECIPIENT fails to complete the project(s), fails to expend or is overpaid federal funds in accordance with federal or state disaster assistance laws or programs, or is found by audit or investigation to owe funds to the State or to FEMA, OEM reserves the right to recapture funds in accordance with federal or state laws and requirements. Repayment by the SUBRECIPIENT of funds under this recovery provision shall occur within 30 days of demand. In the event that OEM is required to initiate legal proceedings to enforce this recovery provision, OEM shall be entitled to its costs thereof, including reasonable attorney fees.

The SUBRECIPIENT shall be responsible for pursuing recovery of monies paid under this Agreement in providing disaster assistance against any party that might be liable, and further the SUBRECIPIENT shall cooperate in a reasonable manner with the State and the United States in efforts to recover expenditures under this Agreement.

In the event the SUBRECIPIENT obtains recovery from a responsible party, the SUBRECIPIENT shall first be reimbursed its reasonable costs of litigation from such recovered funds. The SUBRECIPIENT shall pay to the state the proportionate federal share of all project funds recovered in excess of costs of litigation.

11.0 CONFLICT OF INTEREST

The SUBRECIPIENT will prohibit any employee, governing body, contractor, subcontractor or organization from participating if the employee or entity has an actual or potential conflict of interest that a public official would have under ORS Chapter 244. In addition, SUBRECIPIENT must disclose in a timely manner and in writing to OEM, all violations of Federal criminal law involving fraud, bribery, or gratuity potentially affecting the funds provided under this Agreement as provided in 2 CFR § 200.113.

12.0 POLITICAL ACTIVITY

No portion of the funds provided herein shall be used for any partisan political activity or to further the election or defeat of any candidate for public office or influence the approval or defeat of any ballot measure.

13.0 ASSIGNMENT

This Agreement, and any claim arising under this Agreement, is not assignable or delegable by the SUBRECIPIENT either in whole or in part.

14.0 SUBCONTRACTS FOR ENGINEERING SERVICES

In the event that the SUBRECIPIENT subcontracts for engineering services, the SUBRECIPIENT shall require that the engineering firm be covered by errors and omissions insurance in an amount not less than the amount of the firm's subcontract. If the firm is unable to obtain errors and omissions insurance, the firm shall post a bond with the SUBRECIPIENT for the benefit of the SUBRECIPIENT of not less than the amount of its subcontract. Such insurance or bond shall remain in effect for the entire term of the subcontract. The subcontract shall provide that cancellation or lapse of the bond or insurance during the term of the subcontract shall constitute a material breach of the subcontract and cause for subcontract termination. The SUBRECIPIENT shall cause the subcontractor to provide it with a 30 day notice of cancellation issued by the insurance company.

15.0 APPEALS

Consistent with the Code of Federal Regulations, 44 CFR 206.206, the SUBRECIPIENT may appeal any determination previously made related to the federal assistance for the SUBRECIPIENT. The SUBRECIPIENT's appeal shall be made in writing and submitted to OEM within 60 days after receipt of notice of the action which is being appealed. The appeal shall contain documented justification supporting the SUBRECIPIENT's position.

Upon receipt of a SUBRECIPIENT's appeal, OEM will review the material submitted, make such additional investigations as necessary, and shall forward the appeal with a written recommendation to FEMA within 60 days. Within 90 days following receipt of the appeal, FEMA shall advise OEM, in writing, as to the disposition of the appeal or the need for additional information. If the decision is to grant the appeal, then FEMA will take the appropriate implementing action.

16.0 GOVERNING LAW AND VENUE

This Agreement 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, suit or proceeding (collectively "Claim") between OEM and SUBRECIPIENT that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon provided, however, if the Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively with the United States District Court for the District of Oregon.

SUBRECIPIENT, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

17.0 TERMINATION

1. Except as otherwise provided in this Agreement, either party may terminate this Agreement (which includes the applicable Project Worksheet(s)) upon giving thirty (30) days written notice to the other party. In the event of termination of this Agreement, each party shall be liable only for project costs and allowable expenses incurred by the other party, prior to the effective date of termination.
2. OEM may terminate all or part of this Agreement or may change the project specifications set forth in a Project Worksheet if there is a reduction in federal funds which are the basis for this Agreement, and OEM approves the reduction.
3. OEM may terminate this Agreement, in whole or in part, immediately upon written notice to SUBRECIPIENT, or at such later date as OEM may establish in such notice, if SUBRECIPIENT commits any material breach or default of any covenant, warranty, obligation or certification under this Agreement. In its notice, OEM may permit SUBRECIPIENT an opportunity to cure the breach, default or Failure in such time and on such terms as OEM may specify in such notice.

18.0 WAIVERS

The failure of OEM to exercise, and any delay in exercising, any right, power, or privilege under this Agreement shall not operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or privilege under this Agreement preclude any further exercise thereof or the exercise of any other such right, power or privilege. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.

19.0 INDEMNIFICATION

To the extent permitted by any constitutional and statutory limitations applicable to SUBRECIPIENT, including, but not limited to, provisions relating to debt limits, tort claims limits and workers' compensation, the SUBRECIPIENT shall, as required by ORS 401.178, indemnify, defend, save and hold harmless the United States and its agencies, officers, employees, agents and members, and the State of Oregon and its agencies, officers, employees, agents and members, from and against all claims, damages, losses, expenses, suits or actions of any nature arising out of or resulting from the activities of SUBRECIPIENT, its agencies, officers, employees, agents, members, contractors or subcontractors under this Agreement.

20.0 SUBRECIPIENT ASSURANCES

SUBRECIPIENT represents and warrants to OEM as follows:

1. SUBRECIPIENT is political subdivision of the State of Oregon. SUBRECIPIENT has full power, authority and legal right to execute and deliver this Agreement and incur and perform its obligations hereunder.
2. This Agreement has been duly authorized, executed and delivered on behalf of Subrecipient and constitutes the legal, valid and binding obligation of Subrecipient, enforceable in accordance with its terms.
3. The SUBRECIPIENT hereby assures and certifies that it will comply with all applicable state and federal laws and regulations, including, but not limited to, the

provisions of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 USC §§ 5121-5206 (Public Law 93-288, as amended; hereafter "Stafford Act"); 44 CFR Parts 7, 17, 18 and 206, and Subchapters B, C and D; 2 CFR Part 200 (including Appendix II); the Oregon State Public Assistance Administrative Plan DR4258; Wages, Hours and Records Laws (ORS Chapter 652) Conditions of Employment Laws (ORS Chapter 643) and Unemployment Insurance Laws (ORS Chapter 657).

4. The emergency or disaster relief work for which federal assistance is requested herein does not or will not duplicate benefits received for the same loss from any other source.
5. The SUBRECIPIENT will operate and maintain the facilities being restored using funds provided under this Agreement in accordance with the minimum standards as may be required or prescribed by the applicable federal, state and local agencies for the maintenance and operation of such facilities.
6. The SUBRECIPIENT will, for any repairs or construction financed herewith, comply with applicable standards of safety, decency and sanitation and in conformity with applicable codes, specifications and standards, and will evaluate the hazards in areas in which the proceeds of the grant are to be used and take appropriate action to mitigate such hazards, including safe land use and construction practices. SUBRECIPIENT will, prior to the start of any construction activity, ensure that all applicable federal, state and local permits and clearances are obtained including FEMA compliance with the National Environmental Policy Act, the National Historic Preservation Act, the Endangered Species Act and all other federal and state environmental laws.
7. The SUBRECIPIENT will not enter into a contract with a contractor who is on the General Services Administration (GSA) List of Parties Excluded from Federal Procurement or Non-procurement Programs.
8. The SUBRECIPIENT will comply with minimum wage and maximum hours provision of the Federal Fair Labor Standards Act.
9. The SUBRECIPIENT shall comply with all applicable federal and state non-discrimination laws, regulations, and policies. No person shall, on the grounds of age, race, color, sex, religion, national origin, marital status, or disability (physical or mental) be denied the benefits of, or otherwise be subjected to discrimination under any project, program, or activity, funded, in whole or in part, under this Agreement (as required by Executive Orders 11246, 11375, 41 CFR Part 60-1.4(b), the provisions of which are incorporated herein by reference). A violation of this provision is a material breach and cause for termination under Section 17.0 of this Agreement.
10. The SUBRECIPIENT shall utilize certified minority-owned and women-owned businesses (MWBE's) to the maximum extent possible in the performance of this Agreement.
11. Reserved
12. The SUBRECIPIENT and its contractors, subcontractors and other employers providing work, labor or materials as a result of the application are subject

employers under the Oregon Workers' Compensation Law. All employers, including SUBRECIPIENT, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its Subcontractors complies with these requirements. This shall include Employer's Liability Insurance with coverage limits of not less than \$100,000 for each accident.

13. Reserved

14. Reserved

15. Subrecipients will comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5).

16. Notice of awarding agency requirements and regulations pertaining to reporting.
– Reporting requirements: The Subrecipient will submit a Quarterly Project Status Report (OEM Form) on all Large projects to OEM on a 3-month interval. OEM will submit quarterly progress reports to FEMA that will contain the status of all large projects that have not received final payment. The first quarterly report will be submitted on a quarterly schedule mutually agreed upon between FEMA and OEM. Quarterly reports after that date will be due in OEM by July 15, October 15, January 15 and April 15.

17. Subrecipient will comply with all applicable standards, orders or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Air Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).

18. Subrecipient shall comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conversation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

21.0 OWNERSHIP OF PROJECT/CAPITAL FACILITIES

OEM makes no claim to any capital facilities or real property improved or constructed with funds under this Agreement, and by this grant of funds does not and will not acquire any ownership interest or title to such property of the SUBRECIPIENT.

22.0 ACKNOWLEDGMENTS

The SUBRECIPIENT shall include language which acknowledges the funding contribution of the Federal Emergency Management Agency (FEMA) to the project in any release or other publication developed or modified for, or referring to the project.

23.0 INSURANCE

The SUBRECIPIENT will comply with the insurance requirements of the Stafford Act, as amended, and obtain and maintain any other insurance as may be reasonable,

adequate, and necessary to protect against further loss to any property which was replaced, restored, repaired or constructed with this assistance.

24.0 SEVERABILITY

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

25.0 HEADINGS

The section headings in this Agreement are included for convenience only, do not give full notice of the terms of any portion of this Agreement and are not relevant to the interpretation of any provision of this Agreement.

26.0 AGREEMENT ADMINISTRATION

The Parties' representatives for purposes of this Agreement are:

For SUBRECIPIENT:

NAME	Christa Bosserman-Wolfe
TITLE	Deputy Director
ADDRESS	2051 Kaen Road
CITY	Oregon City, OR 97045
Phone:	(503)742-5407
Fax:	(503)742-5401

For OEM:

Matt Marheine
Alternate Governor's Authorized Representative
Office of Emergency Management
P. O. Box 14370
Salem, OR 97309-5062
Phone: (503) 378-3434
Fax: 503-373-7833

Notices under this Agreement shall be given in writing by personal delivery, facsimile, email or by regular or certified mail to the person identified in this Section, or to such other person or at such other address as either party may hereafter indicate pursuant to this section. Any notice delivered personally shall be deemed received upon delivery. Notice by facsimile shall be deemed given when receipt of the transmission is generated by the transmitting machine. Notice by email is deemed received upon a return email or other acknowledgment of receipt by the receiver, and notice by certified or registered mail is deemed received on the date the receipt is signed or delivery is refused by the addressee.

27.0 ENTIRE AGREEMENT

This Agreement, when combined with one or more completed Project Worksheets, sets forth the entire agreement between the parties with respect to the subject matter hereof. Except for the completion of Project Worksheets, any additional terms and conditions

imposed by the Federal Emergency Management Agency or OEM will be incorporated into a written amendment to this Agreement. Commitments, warranties, representations and understandings or agreements not contained, or referred to, in this Agreement with completed Project Worksheets or written amendment hereto shall not be binding on either party. Except as may be expressly provided herein, no alteration of any of the terms or conditions of this Agreement will be effective without the written consent of both parties.

IN WITNESS WHEREOF, OEM and the SUBRECIPIENT have executed this Agreement as of the date and year written below.

Matt Marheine, Alternate GAR
Office of Emergency Management
Date:

Subrecipient Signature
Printed Name: Jim Bernard
Title: Clackamas County Commission Chair
Date: 5/14/2020

APPROVED
FOR LEGAL SUFFICIENCY

SUBRECIPIENT - PLEASE PRINT THE
FOLLOWING TO EXPEDITE PROCESSING

Sam Zeigler
Assistant Attorney General
By Email
DATE: 4/2/20

Federal Tax ID No. (TIN):
DUNS #: 93-6002286
Organization: Clackamas, County of

Office of Emergency Management
P. O. Box 14370
Salem, OR 97309-5062
CFDA:

Address: 2051 Kaen Road,
Oregon City, OR 97045
Phone: (503) 655-8662

EXHIBIT A –

Information Required by 2 CFR 200.331(a)(1)

Federal Award Identification

1. Subrecipient* Name (which must match the name associated with 2. Below):
2. Subrecipient’s Unique Entity Identifier (i.e. DUNS number):
3. Sub-award Period of Performance Start and End Date:
4. Total Amount of Federal Funds Obligated by this Agreement:
5. Total Amount of Federal Funds Obligated to the Subrecipient by the pass-through entity including this Agreement**: \$
6. Name of pass-through entity, and contact information for awarding official of the Pass-through entity:
 - (a) Name of pass-through entity: Oregon Office of Emergency Management
 - (b) Contact Information for Awarding Official of the pass –through entity: Andrew Phelps
7. Federal Award:
 - (a) Federal Award Identification Number (FAIN):
 - (b) Disaster Declaration Date: 7/09/19
 - (c) Incident Period: 4/06-21/19
 - (d) Federal Award Date:
 - (e) Total Amount of Federal Award committed to the Subrecipient by the pass-through entity:
 - (f) Federal Awarding Agency: FEMA_____
 - (g) CFDA Number and Name: Public Assistance Grant, 97.036
Amount: \$
 - (h) Indirect Cost Rate: __ 0 _____
 - (i) Is Award Research and Development? Yes X No

*For the purposes of this Exhibit F, “Subrecipient” refers to SUBRECIPIENT and “pass-through entity” refers to the State of Oregon, Office of Emergency Management.

**The total amount of federal funds obligated to the Subrecipient by the pass-through entity is the total amount of federal funds obligated to the Subrecipient by the pass-through entity during the current [federal][state] fiscal year.

Exhibit B

<u>P</u>	
Applicant Name:	Application Title:
Period of Performance Start:	Period of Performance End:

Bundle Reference # (Amendment #)	Date Awarded
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Subgrant Application - FEMA Form 90-91

FEDERAL EMERGENCY MANAGEMENT AGENCY PROJECT WORKSHEET					
DISASTER		PROJECT NO.	PA ID NO.	DATE	CATEGORY
FEMA	4258 - DR -OR				
APPLICANT:			WORK COMPLETE AS OF:		
Site 1 of 1					
DAMAGED FACILITY:			COUNTY:		
LOCATION:				LATITUDE:	LONGITUDE:
Current Version:					
DAMAGE DESCRIPTION AND DIMENSIONS:					
SCOPE OF WORK:					
Current Version:					
Does the Scope of Work change the pre-disaster conditions at the site? Yes No			Special Considerations included? Yes No		
Hazard Mitigation proposal included? Yes No			Is there insurance coverage on this facility? Yes No		
PROJECT COST					

Exhibit B

ITEM	CODE	NARRATIVE	QUANTITY/UNIT	UNIT PRICE	COST
				TOTAL COST	\$
PREPARED BY			TITLE		SIGNATURE
APPLICANT REP.			TITLE		SIGNATURE