

September 16, 2021

Housing Authority Board of Commissioners
Clackamas County

Members of the Board:

Approval of a Board Order to write off
Uncollectible Accounts for the First Quarter of Fiscal Year 2022

Purpose/Outcomes	Approval to write off uncollectible rents, late charges and maintenance expenses for the first quarter of fiscal year 2022 by a Board Order.
Dollar Amount and Fiscal Impact	\$644.45 in total collection losses.
Funding Source	N/A
Duration	July 1, 2021 – September 30, 2021
Previous Board Action/Review	FY 21 - First, second, third and fourth quarter collection losses were approved by the Housing Authority Board of Commissioners.
Counsel Review	N/A
Strategic Plan Alignment	<ol style="list-style-type: none"> 1. Efficient & effective services 2. Build Public Trust through good government
Contact Person	Jill Smith, Executive Director, Housing Authority 503-742-5336

BACKGROUND:

The Housing Authority of Clackamas County (HACC), a Division of the Health, Housing and Human Services Department, requests the approval to write off uncollectible rents, late charges and maintenance expenses for the first quarter of fiscal year 2022 (July 1, 2021 – September 30, 2021) by a Board Order. The uncollectible amounts are detailed on the attached worksheets.

Uncollectible amounts for the first quarter of fiscal year 2022 will be \$384.22 for Low Rent Public Housing and \$260.23 for Clackamas Apartments. Of the total first quarter write offs, \$143.15 was for uncollected rents and \$501.30 was for maintenance repairs charged to tenants for repairs required to units before HACC could lease them to a new tenant.

As a business practice, the HACC writes off debts after 90 days of collection efforts. Former residents in Public Housing that have debts that are written off continue to be tracked and are reported to a Federal Government database that prohibits their participation in any other Public Housing program nationally until such debt is paid.

The total amount proposed for transfer from Accounts Receivable to Collection Loss for the first quarter of fiscal year 2022 will be \$644.45.

RECOMMENDATION:

HACC staff recommends the approval to write off uncollectible rents, late charges and maintenance expenses and to authorize the transfer of these accounts from Accounts Receivable to Collection Loss.

Respectfully submitted,

Rodney A. Cook, Director
Health, Housing and Human Services

**BEFORE THE CLACKAMAS COUNTY
HOUSING AUTHORITY BOARD
CLACKAMAS COUNTY, OREGON**

**In the Matter of Writing off
Uncollectible Accounts for the
First Quarter of Fiscal Year 2022**



Board Order #
Page 1 of 1

This matter coming regularly before the Housing Authority Board of Clackamas County, and it appearing that; as a best practice, the Housing Authority of Clackamas County writes off debts after 90 days of collection efforts; and

Whereas, there are uncollectible amounts of \$384.22 for Low Rent Public Housing and \$260.23 for the Clackamas Apartments in Accounts Receivable for the first quarter of fiscal year 2022; and

Whereas, of the total uncollectible debt, \$143.15 was for uncollected rent payments and \$501.30 was for late charges and unit maintenance repairs charged to tenants; and

Whereas, former residents in Public Housing that have had debts that are written off continue to be tracked and are reported to a Federal Government database that prohibits their participation in any other Public Housing Program nationally until such debt is paid; and

Whereas, the full amount of uncollectable debt for the Housing Authority in the first quarter of fiscal year 2022 will be \$644.45; and

It further appearing that, it is in the best interest of the Housing Authority of Clackamas County to transfer \$644.45 in uncollectable debts from Accounts Receivable to Collections Loss for the first quarter of fiscal year 2022.

NOW, THEREFORE, IT IS HEREBY ORDERED that the Housing Authority of Clackamas County to approve the transfer of \$644.45 of uncollectable debt from Accounts Receivable to Collections Loss for the first quarter of fiscal year 2022.

DATED this _____ day of _____, 2021

**CLACKAMAS COUNTY
HOUSING AUTHORITY BOARD**

Chair

Recording Secretary

September 16, 2021

Housing Authority Board of Commissioners
Clackamas County

Members of the Board:

Approval to apply for the U.S. Department of Housing and Urban Development's
Family Self Sufficiency Coordinator Grant Renewal Funding

Purpose/Outcomes	Approval to apply for Family Self Sufficiency renewal funding through the U.S. Department of Housing and Urban Development (HUD)
Dollar Amount and Fiscal Impact	\$129,468
Funding Source(s)	HUD Funds; No County General Funds
Duration	January 1, 2022 – December 31, 2022 (Annually Renewable)
Previous Board Action	N/A
Strategic Plan Alignment	1. Ensure safe, healthy and secure communities 2. Build public trust through good government
Counsel Review	N/A
Contact Person	Jill Smith, HACC Executive Director (503) 742-5336
Contract Number	N/A

BACKGROUND:

The Housing Authority of Clackamas County (HACC), a Division of Health, Housing and Human Services Department, requests approval to apply for the renewal of its Family Self Sufficiency (FSS) Program Coordinator grant. The FSS renewal will provide twelve months of funding for 1.5 coordinators' salary and benefits. The renewal amount is \$129,468.

HACC has utilized this funding since 1999 to maintain its FSS Coordinator position(s). The purpose of the FSS program is to help Voucher families make progress toward self-sufficiency and establish escrow accounts for money management, homeownership, and education in the future. The FSS coordinator assures that program participants are linked to the supportive services they need to achieve self-sufficiency. Without this Grant, HACC could not offer the services of an FSS Coordinator.

The FSS Administrative Fee funding renewal grant does not require matching funds. No County General Funds are involved.

RECOMMENDATION:

Staff respectfully recommends that the Housing Authority of Clackamas County Board of Commissioners approve the application for the FSS Program Grant renewal.

Respectfully submitted,



For Rodney A. Cook
Rodney A. Cook, Interim Director
Health, Housing and Human Services

Healthy Families. Strong Communities.

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

www.clackamas.us



September 16, 2021

Board of County Commissioners

Clackamas County

Members of the Board:

Resolution to Apply for Oregon Parks and Recreation Department County Opportunity Grant Program Funding for Barton Park's East RV Campground Roadway and RV Pads Paving

Purpose/Outcome	Clackamas County Business and Community Services (BCS) - County Parks' staff respectfully request approval to apply for an Oregon State Parks and Recreation Department County Opportunity Grant for funding to rehabilitate paving at Barton Park's East RV Campground.
Dollar Amount and Fiscal Impact	Application will be for \$150,000 in County Opportunity Grant Program funds, and BCS - County Parks will provide \$150,000 in local matching funds identified from their 2019 Metro Local Share Bond funding. This project will be completed in FY 22/23.
Funding Source	Total funding is \$300,000 with \$150,000 in County Opportunity Grant Program funding if awarded, and \$150,000 in 2019 Metro Local Share Bond funding. No general funds are involved.
Duration	Resolution to Apply will be effective upon signature. If awarded, the duration of the grant is anticipated to be from July 1, 2022 through June 30, 2023.
Previous Board Action/Review	No prior Board action; this is a new grant application request.
Strategic Plan Alignment	1. Business and Community Services mission statement as described in its Strategic Business Plan is to "provide essential economic development, public spaces, and community enrichment services". The County Parks program is crucial to providing outdoor recreation and camping opportunities within Clackamas County. 2. Honor, Utilize, Promote, and Invest in our National Resources: This funding will provide 50% of estimated costs to rehabilitate aging infrastructure that is beyond its useful life.
Counsel Review	1. Date of Counsel review: 8/31/21 2. Initials of County Counsel performing review: AK
Procurement Review	No, item is a Resolution to Apply for grant funding.
Contact Person	Tom Riggs (503) 788-3137

Contract No.	N/A
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BACKGROUND:

Barton Park's East RV Campground was opened in 2002 and receives use from May through October each year. When the campground was constructed the project ran over budget. Consequently, a 2-inch asphalt roadway and RV parking pad surfaces were poured rather than a 4-inch. Due to wear and tear over nineteen years, cracking, and some ground settling the project to add a 2-inch lift has become a priority. In 2013, County Parks' staff applied for funding through Oregon Parks and Recreation Department and did not receive the award. In 2015 a crack seal was completed to help preserve and extend the life of existing surfaces in the campground. With nineteen years of use by heavy recreation vehicles, the paving project has become a priority for BCS – County Parks and is supported by the Parks Advisory Board and staff.

RECOMMENDATION:

Staff respectfully recommends the Board of County Commissioners approve the Resolution to Apply for Oregon Parks and Recreation Department County Opportunity Grant Program funding.

ATTACHMENTS:

Resolution to Apply

Respectfully submitted,



Sarah Eckman
Interim Director
Business & Community Services

In the Matter of a Resolution Authorizing
Clackamas County Parks to Apply for a
County Opportunity Grant from the Oregon Parks
and Recreation Department for Barton Park East
RV Campground Road and RV Pad Improvements

This matter coming regularly before the Clackamas County Board of County Commissioners, and it appearing that; the Oregon Parks and Recreation Department is accepting applications for the County Opportunity Grant Program; and

Whereas, Clackamas County, by and through its Parks Department (“Clackamas County Parks”), desires to participate in this grant program to the greatest extent possible as a means of providing needed park and recreation improvements and enhancements; and

Whereas, Barton Park is a popular camping and recreation park along the Clackamas River, and the Parks Advisory Board and County Parks staff have identified roadway and RV pad paving improvements at Barton Park’s East RV Campground as a high priority need in Clackamas County; and

Whereas, Clackamas County Parks has available local matching funds budgeted to fulfill its share of obligation related to this grant application should the grant funds be awarded; and

Whereas, Clackamas County Parks will provide adequate funding for on-going operations and maintenance of this park and recreation facility should the grant funds be awarded; and

It further appearing that it is in the best interest of Clackamas County to approve staff to apply for Oregon Parks and Recreation Department County Opportunity Grant Program funding.

NOW, THEREFORE, IT IS HEREBY RESOLVED that the Clackamas County Board of County Commissioners demonstrates its support for the submittal of a grant application to the Oregon Park and Recreation Department for a County Opportunity Grant for rehabilitation of Barton Park’s East RV Campground roadway and RV pads.

DATED this _ _____ day of September, 2021

CLACKAMAS COUNTY BOARD OF COMMISSIONERS

Chair

Recording Secretary

Financial Assistance Application Lifecycle Form

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

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

** CONCEPTION **

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

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

Lead Department & Fund: _____

Application for: Subrecipient Assistance Direct Assistance
Grant Renewal? Yes No

**If renewal, complete sections 1, 2, & 4 only
If Disaster or Emergency Relief Funding, EOC will need to approve prior to being sent to the BCC**

Name of Funding Opportunity: _____

Funding Source: Federal State Local
Requestor Information (Name of staff person initiating form): _____
Requestor Contact Information: _____
Department Fiscal Representative: _____
Program Name or Number (please specify): _____
Brief Description of Project: _____

Name of Funding Agency: _____

Agency's Web Address for funding agency Guidelines and Contact Information: _____

OR

Application Packet Attached: Yes No

Completed By: _____ Date: _____

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

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

Competitive Application	Non-Competing Application	Other	
CFDA(s), if applicable: _____		Funding Agency Award Notification Date: _____	
Announcement Date: _____		Announcement/Opportunity #: _____	
Grant Category/Title: _____		Max Award Value: _____	
Allows Indirect/Rate: _____		Match Requirement: _____	
Application Deadline: _____		Other Deadlines: _____	
Award Start Date: _____		Other Deadline Description: _____	
Award End Date: _____			
Completed By: _____		Program Income Requirement: _____	
Pre-Application Meeting Schedule: _____			

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

Mission/Purpose:

1. How does the grant/funding opportunity support the Department and/or Division's Mission/Purpose/Goals?

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

3. What are the objectives of this funding opportunity? How will we meet these objectives?

4. Does the grant/financial assistance fund an existing program? If yes, which program? If no, what is the purpose of the program?

Organizational Capacity:

1. Does the organization have adequate and qualified staff? If no, can staff be hired within the grant/financial assistance funding opportunity timeframe?

2. Are there partnership efforts required? If yes, who are we partnering with and what are their roles and responsibilities?

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

4. If funded, would this grant/financial assistance create a new program, does the department intend for the program to continue after initial funding is exhausted? If yes, how will the department ensure funding (e.g. request new funding during the budget process, supplanted by a different program, etc.)?

Collaboration

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

Reporting Requirements

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

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

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

Fiscal

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

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

3. For applications with a match requirement, how much is required (in dollars) and what type of funding will be used to meet it (CGF, In-kind, Local Grant, etc.)?

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

Program Approval:

Name (Typed/Printed)

Date

Signature

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

****ATTACH ANY CERTIFICATIONS REQUIRED BY THE FUNDING AGENCY. COUNTY FINANCE OR ADMIN WILL SIGN.****

Section IV: Approvals

DIVISION DIRECTOR (or designee, if applicable)		
Name (Typed/Printed)	Date	Signature

DEPARTMENT DIRECTOR (or designee, if applicable)		
Name (Typed/Printed)	Date	Signature

FINANCE ADMINISTRATION		
Name (Typed/Printed)	Date	Signature

EOC COMMAND APPROVAL (DISASTER OR EMERGENCY RELIEF APPLICATIONS ONLY)		
Name (Typed/Printed)	Date	Signature

Section V: Board of County Commissioners/County Administration

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

For applications less than \$150,000:

COUNTY ADMINISTRATOR	Approved:	Denied:
Name (Typed/Printed)	Date	Signature

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

BCC Agenda item #:

Date:

OR

Policy Session Date:

County Administration Attestation

**County Administration: re-route to department contact when fully approved.
 Department: keep original with your grant file.**



September 9, 2021

Board of County Commissioners

Clackamas County

Members of the Board:

Approval of Infrastructure and Additional Shared Cost Agreement regarding the Worksource Clackamas One-Stop between the Local Workforce Development Board, Chief Elected Official and Required One-Stop Partners

Purpose/Outcome	Approve Infrastructure Funding Agreement (IFA) providing for allocation of the (WorkSource Clackamas) Center’s infrastructure costs. The federal Workforce Innovation and Opportunity Act (WIOA) requires that the Local Workforce Development Board (Clackamas Workforce Partnership - CWP), the chief elected official (currently Chair Tootie Smith for Clackamas County), and service-providers in our local “One-Stop Center” (WorkSource Clackamas) enter into an Infrastructure and Additional shared Cost Agreement.
Dollar Amount and Fiscal Impact	No County resources are required for Infrastructure Agreement. Service providers housed in or making use of the local WorkSource Center contribute to the costs of facilities upkeep, technology, shared resources, and programmatic supplies, etc.
Funding Source	None required.
Duration	There is a requirement to have an IFA in place for each year and this is the agreement for the July 1, 2020 – June 30, 2021 period. Timing for the negotiation and processing of this agreement was delayed due to other COVID-19 pandemic response activities.
Previous Board Action/Review	July 20, 2021 – Infrastructure Funding Agreement (IFA) was reviewed as part of the Clackamas Workforce Partnership (CWP) annual update policy session to the BCC and approved to move forward for formal approval on the Consent agenda at a future business meeting.
Strategic Plan Alignment	How does this item align with your Department’s Strategic Business Plan goals? The important work of the Clackamas Workforce Partnership (CWP) paired with the training programs delivered by their partners aligns with the below referenced BCS Performance Clackamas Strategic Plan goal. Workforce development programs delivered across the County will allow the opportunity for employers to have a higher likelihood of finding an adequately-trained workforce and for job seekers to be ready for employment opportunities and/or advancements. Goal: • By 2024, businesses seeking to recruit workers, or locate or expand in Clackamas County will have access to at least 5 new,

	<p>sustainably-funded programs or initiatives developed by BCS in partnership with other County departments.</p> <p>How does this item align with the County's Performance Clackamas goals?</p> <p>The IFA agreement aligns with the Board's strategic priority of <i>Building Public Trust through Good Government</i> by providing a transparent review of the Clackamas County One Stop's funding sources, as well the goal to <i>Grow a Vibrant Economy</i>.</p>
Counsel Review	<ol style="list-style-type: none"> 1. Date of Counsel review: 7/27/2021 2. Initials of County Counsel performing review. ARN
Procurement Review	No County funds are required for the IFA
Contact Person	Cindy Moore, BCS Economic Development Coordinator, 971-284-1002
Contract No.	N/A

BACKGROUND:

The federal Workforce Innovation and Opportunity Act (WIOA) requires that the Local Workforce Development Board (Clackamas Workforce Partnership - CWP), the chief elected official (currently Chair Tootie Smith for Clackamas County), and service-providers in our local "One-Stop Center" (WorkSource Clackamas) enter into an Infrastructure Funding Agreement (IFA) providing for allocation of the Center's infrastructure costs. In 2019, Oregon's Local Workforce Development Boards received a Department of Justice approved template to use to structure our agreement. Cost sharing is divvied up among partners and is determined by their presence in the local center (full-time, part-time, and drop-in use of work space). The IFA ensures all service providers housed in or making use of the local WorkSource Center contribute to the costs of facilities upkeep, technology, shared resources, and programmatic supplies, etc. The IFA helps ensure unified service delivery among the various entities operating under the WorkSource Clackamas umbrella.

During the July 20, 2021 policy session with the BCC, the Clackamas Workforce Partnership presented the IFA to the Commissioners, and received direction to place the IFA on a future consent agenda for approval.

RECOMMENDATION:

Staff respectfully recommends approval of the Infrastructure and Additional Shared Cost Agreement.

ATTACHMENTS:

- Infrastructure and Additional Shared Cost Agreement

Respectfully submitted,



Sarah Eckman, Interim Director
Business & Community Services

INFRASTRUCTURE AND ADDITIONAL SHARED COST FUNDING AGREEMENT

This Infrastructure and Additional Shared Cost Funding Agreement (“**Agreement**”), effective on July 1, 2020 (the “**Effective Date**”), is entered into by and among Clackamas Workforce Partnership, an Oregon non-profit corporation, acting as the Local Workforce Development Board (the “**Local WDB**”) for Clackamas County (the “**Local Area**”), the sitting chair of the Clackamas County Board of Commissioners, the chief elected official for the Local Area (“**CEO**”), and each other party whose name and signature appears on the signature pages hereof (each, a “**Party**” and, collectively, the “**Parties**”).

RECITALS

A. The federal Workforce Innovation and Opportunity Act (the “**WIOA**”) contemplates that the Local Workforce Development Board, the chief elected official, each entity (each a “**Required One-Stop Partner**” and, collectively, the “**Required One-Stop Partners**”) that carries out a program described in Section 121(b)(1)(B) of the WIOA, and other entities, carrying out a workforce development program, that are approved by the Local Workforce Development Board and the chief elected official (the “**Other One-Stop Partners**”) (the Required One-Stop Partners and the Other One-Stop Partners, each a “**One-stop Partner**” and, collectively, the “**One-Stop Partners**”) in a local area will enter into a Memorandum of Understanding as described in Section 121(c) of the WIOA and 20 CFR 678.500 to provide for the allocation among themselves and payment of the infrastructure costs of the “**One-Stop Centers**” contemplated by the WIOA and through which the One-Stop Partners deliver their workforce development programs (the “**Programs**”).

B. Under 20 CFR 678.420(b)(2), the allocation of One-Stop Center infrastructure costs among the One-Stop Partners must be based on (1) each One-Stop Partners’ proportionate use and relative benefit received, (2) federal cost principles, and (3) any local administrative cost requirements in the Federal law authorizing the One-Stop Partner's program.

C. If the Local Workforce Development Board, the chief elected official, and the One-Stop Partners in a local area fail to enter into an agreement for the allocation and payment, among the One-stop Partners, of the infrastructure costs of the One-Stop Center in their local area, the Governor will allocate the infrastructure costs among the One-Stop Partners in accordance with the process set forth in 20 CFR 678.731.

D. The WIOA also contemplates that the Local Workforce Development Board, the chief elected official, and the One-Stop Partners will enter in an agreement to provide for the allocation and payment, among the One-stop Partners, of additional shared costs relating to the operation of the One-Stop Centers. These costs must include the costs of applicable career services and may include any other shared services that are authorized for and commonly provided through the One-Stop Partner Programs.

E. Under 20 CFR 678.760, the allocation of One-Stop Center operating costs among the One-Stop Partners must be based on the proportion of benefit received by each of the One-Stop Partners, consistent with applicable federal law.

F. The CEO, the Local WDB, and the One-Stop Partners party hereto (the “**Local One-Stop Partners**”), after completing their negotiations and discussions on the allocation of infrastructure costs and operating costs for the One-Stop Center in the Local Area, desire to enter into this agreement to implement their allocation arrangement and provide for payment of the One-Stop infrastructure costs and operating costs in accordance with the requirements of the WIOA and its implementing regulations.

NOW THEREFORE, the Parties hereby agree as follows:

AGREEMENT

ARTICLE 1

BUDGET, ALLOCATION AND PAYMENT OF INFRASTRUCTURE COSTS

Section 1.1 **Infrastructure Cost Budget.** The Infrastructure Cost Budget for the One-Stop Center in the Local Area for Program Year 2020 (July 1, 2020, to June 30, 2021) (an “**Infrastructure Cost Budget**”) is set forth on Exhibit A. The Parties may amend this Agreement to add Infrastructure Cost Budgets for future program years through preparation of a written Infrastructure Cost Budget for the year and execution thereof by each of the Parties. Upon such execution, the Infrastructure Cost Budget shall be deemed added to Exhibit A and shall serve as the Infrastructure Cost Budget for the specified year for purposes of this Agreement. Subject to earlier termination as provided herein, this Agreement shall continue to govern the Parties’ rights and obligations related to infrastructure costs of the One-Stop Center in the Local Area so long as Exhibit A includes an Infrastructure Cost Budget for the then-current program year. This Agreement shall automatically terminate at the beginning of the first program year lacking an Infrastructure Cost Budget in Exhibit A.

Section 1.2 **Infrastructure Cost Allocation.** The costs in an Infrastructure Cost Budget are allocated among the Local One-Stop Partners as set forth in Exhibit B (the “**Infrastructure Cost Allocation**”). At the request of the Local WDB from time to time, but not less frequently than once per year, the Parties shall review infrastructure costs incurred for operation of the One-Stop Center in the Local Area and the allocation of those costs under the Infrastructure Cost Allocation to confirm that the infrastructure costs actually allocated to each Local One-Stop Partner are proportionate to that Local One-Stop Partner’s use of the One-Stop Center and the relative benefit received by each Local One-Stop Partner and the Local One-Stop Partner’s programs and activities. As a result of such review, the Parties shall make any necessary adjustments to the Infrastructure Cost Allocation through amendment of this Agreement. If the Parties fail to reach agreement on the need for adjustments to the Infrastructure Cost Allocation, the Local WDB shall convene a meeting among representatives of Parties to resolve the disagreement.

Section 1.3 **Infrastructure Cost Payment.**

1.3.1 Infrastructure Cost Contributions. No later than 30 days after the end of each calendar quarter, each Local One-Stop Partner shall notify the Local WDB in writing of any cash or in-kind contributions to cover costs included in the applicable Infrastructure Cost Budget that the Local One-Stop Partner made during the prior calendar quarter, any information needed from that Local One-Stop Partner to apply the Infrastructure Cost Allocation for the quarter, and supporting documentation for such in-kind contributions and cost allocation information as the Local WDB may reasonably request. Any in-kind contributions will be valued consistent with 2 CFR 200.306; provided, however, to the extent allowed, if any, by 2 CFR 200.306, the Local One-Stop Partners will negotiate and agree upon the identification, inclusion, and value of in-kind contributions. If the Local One-Stop Partners cannot agree on whether a proposed in-kind contribution should be included, or its value, the in-kind contribution will not be applied to the calculation to determine the amount by which that Local One-Stop Partner's in-kind contributions exceed its allocation of the infrastructure costs for the quarter. A Local One-Stop Partner's failure to notify the Local WDB of such in-kind contributions and cost allocation information within 45 days of the end of the calendar quarter shall, at the discretion of the Local WDB, constitute that Local One-Stop Partner's waiver of any right to payment for any amount by which that Local One-Stop Partner's in-kind contributions exceed its allocation of the infrastructure costs for the quarter.

1.3.2 Payment of Infrastructure Costs. No later than 45 days after the end of each calendar quarter and based on the information received from the Local One-Stop Partners under Section 1.3.1, the applicable Infrastructure Cost Budget, and the Infrastructure Cost Allocation, the Local WDB shall notify each Local One-Stop Partner of the total infrastructure costs incurred during the quarter, by Infrastructure Cost Budget line item, and of the portion of those costs allocated to that Local One-Stop Partner. Such notification shall identify and reflect any cash or in-kind contributions to the infrastructure costs of the One-Stop Center received from other than a Local One-Stop Partner during the quarter (which reduce the overall costs otherwise allocated to the Local One-Stop Partners), with any in-kind contributions valued consistent with 2 CFR 200.306 and Section 1.3.1. If the portion of the infrastructure costs allocated to a Local One-Stop Partner for the quarter exceeds the Local One-Stop Partner's contributions to infrastructure costs during the quarter, that Local One-Stop Partner shall, subject to Article 3, pay the difference to the Local WDB no later than 45 days after receipt of notification from the Local WDB of the infrastructure costs for the quarter. If the portion of the infrastructure costs allocated to a Local One-Stop Partner for the quarter is less than the Local One-Stop Partner's contributions to infrastructure costs during the quarter, the Local WDB shall, subject to Article 3, pay the difference to that Local One-Stop Partner promptly after the Local WDB's receipt of sufficient funds from the other Local One-Stop Partners to make that payment.

1.3.3 Cost Overruns. If the Local WDB anticipates that future infrastructure costs for a program year will exceed the Infrastructure Cost Budget for that year (either overall or on a line-item basis), the Local WDB shall notify each Party and recommend that the Parties negotiate an adjusted Infrastructure Cost Budget for the year. If the Parties reach agreement on an adjusted Infrastructure Cost Budget for the year, the Parties may amend this Agreement to replace the existing Infrastructure Cost Budget for the year with the adjusted Infrastructure Cost Budget for the year through execution by each of the Parties of a written adjusted Infrastructure Cost Budget for the year. Upon such execution, the adjusted Infrastructure Cost Budget for that year shall be deemed to replace the existing Infrastructure Cost Budget for that year. Regardless of whether the Parties agree on an adjusted Infrastructure Cost Budget for a year, any cost (of a type included in the Infrastructure Cost Budget)

overrun incurred while this Agreement is in effect shall be allocated to each Local One-Stop Partner in the same proportion as such cost would be allocated under this Agreement if it were not a cost overrun. If the Parties agree on an adjusted Infrastructure Cost Budget after the expiration of the year for which that budget is applicable, the Parties may amend this Agreement to replace the existing Infrastructure Cost Budget for that prior year and shall otherwise adjust their cost allocations and later in time payments so as to reconcile or “true up” amounts actually received or paid with the adjusted budget. The Parties intend to limit the total amount of any infrastructure cost adjustments for a year to no more than a ten percent (10%) increase to the Infrastructure Cost Budget allocation of each Local One-Stop Partner.

ARTICLE 2

BUDGET, ALLOCATION AND PAYMENT OF ADDITIONAL SHARED COSTS

Section 2.1 Additional Shared Cost Budget. The Additional Shared Cost Budget for the One-Stop Center in the Local Area for Program Year 2020 (July 1, 2020 to June 30, 2021) (an “**Additional Shared Cost Budget**”) is set forth on Exhibit C. The Parties may amend this Agreement to add Additional Shared Cost Budgets for future program years through preparation of a written Additional Shared Cost Budget for the year and execution thereof by each of the Parties. Upon such execution, the Additional Shared Cost Budget shall be deemed added to Exhibit C and shall serve as the Additional Shared Cost Budget for the specified year for purposes of this Agreement. Subject to earlier termination as provided herein, this Agreement shall continue to govern the Parties’ rights and obligations related to additional shared costs of the One-Stop Center in the Local Area so long as Exhibit C includes an Additional Shared Cost Budget for the then-current program year. This Agreement shall automatically terminate at the beginning of the first program year lacking an Additional Shared Cost Budget in Exhibit C.

Section 2.2 Additional Shared Cost Allocation. The costs in an Additional Shared Cost Budget are allocated among the Local One-Stop Partners as set forth in Exhibit D (the “Additional Shared Cost Allocation”). At the request of the Local WDB from time to time, but not less frequently than once per year, the Parties shall review additional shared costs incurred for operation of the One-Stop Center in the Local Area and the allocation of those costs under the Additional Shared Cost Allocation to confirm that the additional shared costs actually allocated to each One-Stop Partner are proportionate to the benefit received by that One-Stop Partner’s use of the One-Stop Center. As a result of such review, the Parties shall make any necessary adjustments to the Additional Shared Cost Allocation through amendment of this Agreement. If the Parties fail to reach agreement on the need for adjustments to the Additional Shared Cost Allocation, the Local WDB shall convene a meeting among representatives of Parties to resolve the disagreement.

Section 2.3 Additional Shared Cost Payment.

2.3.1 Additional Shared Cost Contributions. No later than 30 days after the end of each calendar quarter, each One-Stop Partner shall notify the Local WDB in writing of any cash or in-kind contributions to cover costs included in the applicable Additional Shared Cost Budget that the One-Stop Partner made during the prior calendar quarter, any information needed from that One-Stop Partner to apply the Additional Shared Cost Allocation for the quarter, and supporting documentation for such contributions and information as the Local WDB may reasonably request. Any in-kind contributions will be valued consistent with 2 CFR 200.306; provided, however, to the extent allowed,

if any, by 2 CFR 200.306, the Local One-Stop Partners will negotiate and agree upon the identification, inclusion, and value of in-kind contributions. If the Local One-Stop Partners cannot agree on whether a proposed in-kind contribution should be included, or its value, the in-kind contribution will not be applied to the calculation to determine the amount by which that Local One-Stop Partner's in-kind contributions exceed its allocation of the infrastructure costs for the quarter. A One-Stop Partner's failure to notify the Local WDB of such contributions and information within 30 days of the end of the calendar quarter shall, at the discretion of the Local WDB, constitute that Local One-Stop Partner's waiver of any right to payment for any amount by which that Local One-Stop Partner's in-kind contributions exceed its allocation of the additional shared costs for the quarter.

2.3.2 Payment of Additional Shared Costs. No later than 45 days after the end of each calendar quarter and based on the information received from the Local One-Stop Partners under Section 2.3.1, the applicable Additional Shared Cost Budget, and the Additional Shared Cost Allocation, the Local WDB shall notify each Local One-Stop Partner of the total additional shared costs incurred during the quarter, by Additional Shared Cost Budget line item, and of the portion of those costs allocated to that Local One-Stop Partner. Such notification shall identify and reflect any cash or in-kind contributions to the additional shared costs of the One-Stop Center received from other than a Local One-Stop Partner during the quarter (which reduce the overall costs otherwise allocated to the Local One-Stop Partners), with any in-kind contributions valued consistent with 2 CFR 200.306 and Section 2.3.1. If the portion of the additional shared costs allocated to a Local One-Stop Partner for the quarter exceeds the Local One-Stop Partner's contributions to additional shared costs during the quarter, that Local One-Stop Partner shall, subject to Article 3, pay the difference to the Local WDB no later than 30 days after receipt of notification from the Local WDB of the additional shared costs for the quarter. If the portion of the additional shared costs allocated to a Local One-Stop Partner for the quarter is less than the Local One-Stop Partner's contributions to additional shared costs during the quarter, the Local WDB shall, subject to Article 3, pay the difference to that Local One-Stop Partner promptly after the Local WDB's receipt of sufficient funds from the other Local One-Stop Partners to make that payment.

2.3.3 Cost Overruns. If the Local WDB anticipates that future additional shared costs for a program year will exceed the Additional Shared Cost Budget for that year (either overall or on a line-item basis), the Local WDB shall notify each Party and recommend that the Parties negotiate an adjusted Additional Shared Cost Budget for the year. If the Parties reach agreement on an adjusted Additional Shared Cost Budget for the year, the Parties may amend this Agreement to replace the existing Additional Shared Cost Budget for the year with the adjusted Additional Shared Cost Budget for the year through execution by each of the Parties of a written adjusted Additional Shared Cost Budget for the year. Upon such execution, the adjusted Additional Shared Cost Budget for that year shall be deemed to replace the existing Additional Shared Cost Budget for that year. Regardless of whether the Parties agree on an adjusted Additional Shared Cost Budget for a year, any cost (of a type included in the Additional Shared Cost Budget) overrun incurred while this Agreement is in effect shall be allocated to each Local One-Stop Partner in the same proportion as such cost would be allocated under this Agreement if it were not a cost overrun. If the Parties agree on an adjusted Additional Shared Cost Budget after the expiration of the year for which that budget is applicable, the Parties may amend this Agreement to replace the existing Additional Shared Cost Budget for that prior year and shall otherwise adjust their cost allocations and later in time payments so as to reconcile or "true up" amounts actually received or paid with the adjusted budget. The Parties intend to limit the

total amount of any additional shared cost adjustments for a year to no more than a ten percent (10%) increase to the Additional Shared Cost Budget allocation of each Local One-Stop Partner.

ARTICLE 3 CONDITIONS TO PAYMENT OBLIGATIONS

If a Party is an agency of the State of Oregon, then such Party's payment obligations under this Agreement are conditioned on the Party receiving sufficient funding, appropriations and other expenditure authorizations to allow that Party, in the reasonable exercise of its administrative discretion, to make the payment. If a Party is a local government, then such Party's payment obligations under this Agreement are conditioned on the Party receiving from its governing body sufficient funding, appropriations and other expenditure authorizations to allow that Party, in the reasonable exercise of its administrative discretion, to make the payment. If a Party is a local workforce development board that is subject to debt limitations imposed, or expenditures or funding authorized, by law, because of its unique relationship with local governments, then such Party's obligations under this Agreement are conditioned on that Party receiving sufficient funding, appropriations or other expenditure authorizations to allow that Party, in the exercise of its reasonable administrative discretion, to make the payment.

ARTICLE 4 TERM AND TERMINATION

Section 4.1 **Term.** This Agreement shall remain in effect until the earlier of (1) its termination under Sections 1.1 or 2.1 or (2) a Party's exercise of its right to terminate this Agreement under this Article 4.

Section 4.2 **Termination.** This Agreement may be terminated as follows:

4.2.1 **Notice.** A Party may terminate this Agreement effective upon 90 days advance written notice to each other Party.

4.2.2 **Non-appropriation.** A Party may terminate this Agreement effective upon written notice to each other Party, if a Party fails to receive sufficient funding, appropriations and other expenditure authorizations to allow that Party, in the reasonable exercise of its administrative discretion, to continue making payments under this Agreement, as further described in Article 3.

4.2.3 **Change in Law.** A Party may terminate this Agreement effective upon written notice to each other Party, if federal or state laws, rules, regulations or guidelines are modified or are interpreted by the Federal Grant recipient agencies in such a way that the financing of One-Stop Center infrastructure costs as contemplated by this Agreement is no longer allowable.

4.2.4 **Non-compliance.** A Party may terminate this Agreement effective upon 30 days advance written notice to each other Party, if a Party fails to comply with its obligations under this Agreement, including a failure to make a required payment, and such failure remains uncured at the end of the 30-day period.

ARTICLE 5

EFFECT OF TERMINATION

Section 5.1 **Costs Incurred.** Termination of this Agreement shall not affect a Local One-Stop Partner's responsibility under this Agreement for infrastructure costs and additional shared costs incurred prior to the date of termination. Each Local One-Stop Partner shall continue to be responsible for its allocable portion of such costs in accordance with the terms and conditions of Articles 1 and 2.

Section 5.2 **Default Cost Allocation.** Unless the Parties have entered into a successor agreement for the allocation of infrastructure costs for the One-Stop Center in the Local Area, upon termination of this Agreement, the Local WDB shall so notify the Governor and such infrastructure costs will be allocated by the Governor among the Parties in accordance with the process set forth in 20 CFR 678.730 to 750. There is no default funding allocation for additional shared costs, in the event of termination of this Agreement.

ARTICLE 6 GENERAL

Section 6.1 **Counterparts.** This Agreement may be executed in any number of counterparts, and any single counterpart or set of counterparts signed, in either case, by all the parties hereto shall constitute a full and original instrument, but all of which shall together constitute one and the same instrument.

Section 6.2 **Survival.** Articles 5 and 6 shall survive termination of this Agreement.

Section 6.3 **Notice.** Any notice required or permitted under this Agreement shall be in writing and shall be deemed effective (1) when actually delivered in person, (2) one business day after deposit with a commercial courier service for "next day" delivery, (3) two business days after having been deposited in the United States mail as certified or registered mail, or (4) when transmitted by email, addressed to a Party as set forth on the signature pages hereof.

Section 6.4 **Records and Inspection.** Each Local One-Stop Partner shall keep proper books of account and records on all costs in an Infrastructure Cost Budget that it incurs prior to the date of termination of this Agreement. Each Local One-Stop Partner will maintain these books of account and records in accordance with generally accepted accounting principles and shall retain the books of account and records until the later of: (i) termination of this Agreement, (ii) the date that all disputes, if any, arising under this Agreement have been resolved or (iii) the period required by any applicable records retention or similar laws. Each Party will permit each other Party and/or its duly authorized representatives to inspect, review and make excerpts and transcripts of such books of account and records. Access to these records is not limited to the required retention period. The authorized representatives shall have access to the records at any reasonable time for as long as the records are maintained.

Section 6.5 **Successors and Assigns.** No Party may assign this Agreement or any right hereunder or interest herein, in whole or in part, without the prior written consent of each other Party. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective permitted successors and assigns.

Section 6.6 Governing Law, Jurisdiction, Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon, without regard to its conflicts of law principles. Any legal action regarding this Agreement must be brought and conducted in the Circuit Court of the State of Oregon for Marion County (unless Oregon law requires that it be brought and conducted in the Circuit Court in another Oregon county). Each Party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

Notwithstanding the preceding paragraph, if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This paragraph applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This paragraph is also not a waiver by the State of Oregon of any form of defense or immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

Section 6.7 Modification; Prior Grant Agreements; Headings. This Agreement may not be modified or amended except by an instrument in writing signed by each Party. This Agreement reflects and sets forth the entire agreement and understanding of the Parties with respect to the subject matter hereof, and supersedes all prior agreements and understandings relating to such subject matter. The headings in this Agreement are for the purpose of reference only and shall not limit or otherwise affect any of the terms hereof.

Section 6.8 Validity; Severability. If any provision of this Agreement is held to be invalid, such event shall not affect, in any respect whatsoever, the validity of the remainder of this Agreement, and the remainder shall be construed without the invalid provision so as to carry out the intent of the Parties to the extent possible without the invalid provision.

Section 6.9 Exhibits. The exhibits to this Agreement are, by this reference, incorporated into and deemed a part of this Agreement as if they were fully set forth in the text hereof. If the language in an Exhibit conflicts with or is inconsistent with language not appearing in an Exhibit, the latter shall control.

Section 6.10 Time of Essence. Time is of the essence of this Agreement.

Section 6.11 Relationship of the Parties. Nothing contained in this Agreement or any acts of the Parties hereto shall be deemed or construed to create the relationship of principal and agent, or of partnership, or of joint venture or of any other association other than that of independent contracting parties.

Section 6.12 No Third Party Beneficiary Rights. No person not a party to this Agreement is an intended beneficiary of this Agreement, and no person not a party to this Agreement shall have any right to enforce any term of this Agreement.

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

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

Seth Lyon, L.C.S.W.

Seth Lyon, L.C.S.W. (May 3, 2021 09:33 PDT)

Seth Lyon, District Manager
For Department of Human Services -- Self-Sufficiency
seth.lyon@dhsosha.state.or.us

Doug Franklin, MS CRC, VR Clackamas Branch Manager
For Department of Human Services -- Vocational Rehabilitation
douglas.r.franklin@dhsosha.state.or.us

Carol Salter

Carol Salter, President/CEO
For Easter Seals Oregon
csalter@or.easterseals.com

Donna Lewelling

Donna Lewelling, State Adult Basic Education Director
For Higher Education Coordinating Commission
Donna.j.Lewelling@state.or.us

David K. Gerstenfeld

David K. Gerstenfeld (May 1, 2021 15:28 PDT)

David Gerstenfeld, Acting Director
For Oregon Employment Department
david.k.gerstenfeld@oregon.gov

Bridget Dazey

Bridget Dazey (Apr 29, 2021 12:25 PDT)

Bridget Dazey, Executive Director,
For Clackamas Workforce Partnership, the Clackamas County Workforce Development Board
Bridget.dazey@clackamasworkforce.org

Tootie Smith, Chair
For the Clackamas County Board of County Commissioners
tsmith@clackamas.or.us

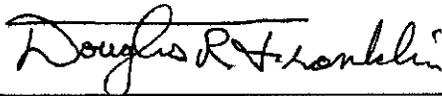
Jill Smith

Jill Smith, Director
For the Housing Authority of Clackamas County
jsmith6@clackamas.us

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

Seth Lyon, District Manager
For Department of Human Services – Self-Sufficiency
seth.lyon@dhsosha.state.or.us

Doug Franklin, MS CRC, VR Clackamas Branch Manager
For Department of Human Services – Vocational Rehabilitation
douglas.r.franklin@dhsosha.state.or.us



Carol Salter, President/CEO
For Easter Seals Oregon
csalter@or.easterseals.com

Donna Lewelling, State Adult Basic Education Director
For Higher Education Coordinating Commission
Donna.j.Lewelling@state.or.us

David Gerstenfeld, Acting Director
For Oregon Employment Department
david.k.gerstenfeld@oregon.gov

Bridget Dazey, Executive Director,
For Clackamas Workforce Partnership, the Clackamas County Workforce Development Board
Bridget.dazey@clackamasworkforce.org

Tootie Smith, Chair
For the Clackamas County Board of County Commissioners
tsmith@clackamas.or.us

Jill Smith, Director
For the Housing Authority of Clackamas County
jsmith6@clackamas.us



Jada Rupley, Superintendent
For Clackamas Education Service District
jrupley@clackesd.k12.or.us



Dacia Johnson, Executive Director
For Oregon Commission for the Blind
dacia.johnson@state.or.us

Tyson Arnold, Center Director
For Job Corps
tyson.arnold@usda.gov

Jada Rupley, Superintendent
For Clackamas Education Service District
jrupley@clackesd.k12.or.us

Dacia Johnson, Executive Director
For Oregon Commission for the Blind
dacia.johnson@state.or.us

Pending **Tyson Arnold** Digitally signed
by Tyson Arnold
Date: 2021.06.22
20:34:33 -07'00'

Tyson Arnold, Center Director
For Job Corps
tyson.arnold@usda.gov

**EXHIBIT A
INFRASTRUCTURE COST BUDGET**

On or about July 1, 2020 we will have an MOU/IFA in place covering co-located and non-located workforce partners. The financial arrangements will be reflected in one of three ways: 1) the lease, 2) partner sharing agreements, or 3) other arrangements. These arrangements will be captured in this ever-evolving exhibit. Leases, costs and allocations change and, hopefully, our partnerships will expand and there will be a higher level of co-location over time.

In the table below, *co-located partner agreements* are listed based on their status of being in place, in process or anticipated.

L (Lease) P (PCSA) O (Other)	Party #1	Party #2	Annual Cost	Currently Executed	In Process	Expected Date	Anticipated New or Mod	Expected Date
L	Oregon Employment Dept	Clackamas Workforce Partnership	\$5277.60	X				
P	Oregon Employment Dept	Clackamas Workforce Partnership	\$4143.60	X				
<u>L</u>	<u>Oregon Employment Dept</u>	<u>Easterseals</u>	<u>\$1872.00</u>	<u>X</u>				
<u>P</u>	<u>Oregon Employment Dept</u>	<u>Easterseals</u>	<u>\$2295.60</u>	<u>X</u>				

The infrastructure costs for *non-located workforce partners (NCWPs)* were calculated through the following process:

1. Designation of a cubicle in WorkSource Clackamas as the technology nexus for NCWPs; and
2. Costing out of the cubicle - phone, equipment, network access, supplies, and square footage (see breakdown of costs below)

NCWP Technology Nexus Cubicle Cost Breakdown

	Cost Per	#	Monthly Total	Annual Total
Phone	27.00	1.00	27.00	324.00
Equipment	43.00	1.00	43.00	516.00
Network access (Both Printer and Computer)	8.10	2.00	16.20	194.40
Supplies	37.00	1.00	37.00	444.00
Square Footage	0.39	96.00	37.44	449.28
TOTALS			160.64	1927.68

**EXHIBIT B
INFRASTRUCTURE COST ALLOCATION**

Infrastructure cost allocation is provided through the documents identified in Exhibit A for *co-located workforce partners*.

Infrastructure cost allocation for *non-colocated workforce partners (NCWPs)* is based on the number of WIOA NCWPs participating in this Infrastructure Shared Cost Funding Agreement. The allocation is calculated through the division of the cost of the Technology Nexus cubicle evenly between the NCWPs. For the year beginning July 1, 2020, there are seven (7) NCWPs with costs broken down as follows:

Cost Allocation Per Non-colocated Workforce Partner

NCWP	Monthly Total	Annual Total
Department of Human Services - Vocational Rehabilitation	22.95	275.38
Clackamas Education Service District	22.95	275.38
Oregon Commission for the Blind	22.95	275.38
Higher Education Coordinating Commission	22.95	275.38
Job Corps	22.95	275.38
Department of Human Services - Self-Sufficiency Programs	22.95	275.39
Housing Authority of Clackamas County	22.95	275.39
TOTALS	160.65	1927.68

EXHIBIT C
ADDITIONAL SHARED COST BUDGET

Not applicable for the year beginning July 1, 2020.

EXHIBIT D
ADDITIONAL SHARED COST ALLOCATION

Not applicable for the year beginning July 1, 2020.

September 16, 2021

Board of County Commissioner
Clackamas County

Members of the Board:

Approval of Renewal Intergovernmental Agreement with State of Oregon, Oregon Health Authority, for the Foodborne Illness Prevention Program

Purpose/Outcomes	This agreement allows the Public Health Division to provide complete environmental health food licensing and inspections to safeguard the health of residents in Clackamas County.
Dollar Amount and Fiscal Impact	This is a no Maximum Agreement
Funding Source	Fee for Services - No County General Funds are involved.
Duration	Effective June 30, 2021 and terminates on June 30, 2023
Previous Board Action	The BCC last approved the item on June 22, 2017 062221-A2
Strategic Plan Alignment	1. Improved Community Safety and Health 2. Ensure safe, healthy and secure communities
Counsel Review	County counsel has reviewed and approved this document on July 27, 2021 KR
Procurement Review	1. Was the item processed through Procurement? yes <input type="checkbox"/> no <input checked="" type="checkbox"/> 2. This item is an IGA
Contact Person	Philip Mason-Joyner, Public Health Director – (503)742-5956
Contract No.	10292

BACKGROUND:

The Clackamas County Public Health Division (CCPHD) of the Health, Housing & Human Services Department requests the approval of an Intergovernmental Agreement with State of Oregon, Oregon Health Authority for the Food Bourne Illness Prevention Program. This agreement allows CCPHD to provide complete environmental health food licensing and inspections to safeguard the health of residents in Clackamas County.

This Agreement is effective June 30, 2021 and continues through June 30, 2023. This Agreement is a fee for service and is a No Maximum value.

Page 2 Staff Report
September 16, 2021
Agreement #10292

RECOMMENDATION:

Staff recommends the Board approval of this Amendment.

Respectfully submitted,

Mary A. Rumbaugh

For Rodney A. Cook

Rodney A. Cook, Interim Director
Health, Housing, and Human Services

Mary A. Rumbaugh

In compliance with the Americans with Disabilities Act, this document is available in alternate formats such as Braille, large print, audio recordings, Web-based communications and other electronic formats. To request an alternate format, please send an e-mail to dhs-oha.publicationrequest@state.or.us or call 503-378-3486 (voice) or 503-378-3523 (TTY) to arrange for the alternative format.

AGREEMENT # 170698

OREGON HEALTH AUTHORITY INTERGOVERNMENTAL AGREEMENT FOR ENVIRONMENTAL HEALTH SERVICES

This Agreement is between the State of Oregon acting by and through its Oregon Health Authority (“OHA”) and Clackamas County, by and through its Department of Environmental Health, the Local Public Health Authority (“LPHA”), each a “Party” and together, the “Parties.” This Agreement consists of this document and includes the following listed exhibits which are incorporated into this agreement:

- Exhibit A: Subcontractor insurance requirements

SECTION 1. AUTHORITY

- ORS 446.310 to 446.350 establishes a state licensure program for tourist facilities.
- Upon request from a county, ORS 446.425 requires OHA to delegate to the county board of commissioners any of the duties and functions of the director under ORS 446.310, 446.320, 446.330 to 446.340, 446.345, 446.350 and 446.990 if OHA determines that the county is able to carry out the rules of OHA relating to fee collection, inspections, enforcement and issuance and revocation of permits and licenses in compliance with standards for enforcement by the counties and monitoring by OHA.
- ORS 448.005 to 448.090 establishes a state licensure program for pool and spa facilities.
- Upon request from a county, ORS 448.100 requires OHA to delegate to the county board of commissioners any of the duties and functions of the director under ORS 448.005, 448.011, 448.020 to 448.035, 448.040 to 448.060 and ORS 448.100 if OHA determines that the county is able to carry out the rules of OHA relating to fee collection, licensing, inspections, enforcement and issuance and revocation of permits and certificates in compliance with standards for enforcement by the counties and monitoring by OHA.
- ORS 624.010 to 624.121 establishes a state licensure program for restaurants and bed and breakfast facilities.
- ORS 624.310 to 624.340 establishes a state licensure program for commissaries, mobile units, warehouse and vending machines.
- ORS 624.510 requires OHA to enter into this Agreement with a LPHA delegating to the LPHA the administration and enforcement within the jurisdiction of the LPHA of the powers, duties and functions of the OHA director under ORS 624.010 to 624.121, 624.310 to 624.430, 624.650 and 624.992. This Agreement must describe the powers, duties and functions of the local public health authority relating to fee collection, licensing, inspections, enforcement, civil penalties and issuance and revocation of permits and certificates, standards for enforcement by the LPHA and the monitoring to be performed by the OHA.

SECTION 2. PURPOSE

The purposes of this Agreement are:

- For LPHAs to request the duties and functions of OHA and for OHA to review whether the requested delegation is appropriate as described in Section 6 of this Agreement. For OHA to delegate responsibility to LPHAs who have requested the duties and functions of OHA for carrying out the following programs:
 - The Tourist Facility program in ORS 446.310 to 446.350 pursuant to ORS 446.425(1);
 - The Pool/Spa program in ORS 448.005 to 448.090 pursuant to ORS 448.100(1) except for the authority to issue variances under ORS 448.037 and except for plan review and approval under ORS 448.030 pursuant to ORS 448.100(1); and
 - The restaurant, bed and breakfast facility, commissary, mobile unit, warehouse and vending machine licensing programs in ORS 624.010 to 624.121, 624.310 to 624.430, 624.650 and 624.992 pursuant to ORS 624.510(1).
- For OHA to delegate responsibility to LPHAs for carrying out the restaurant, bed and breakfast facility, commissary, mobile unit, warehouse and vending machine licensing programs in ORS 624.010 to 624.121, 624.310 to 624.430, 624.650 and 624.992 pursuant to ORS 624.510(1).
- To establish the duties, standards and responsibilities of the LPHA in carrying out the delegated duties.
- To establish OHA's duties and responsibilities under this Agreement to enable the LPHA to meet the requirements of the delegation and to provide for OHA's review and monitoring of the LPHA's performance.

SECTION 3. EFFECTIVE DATE

Upon approval of this Agreement by the parties, and when required, the Department of Justice, this Agreement shall become effective on **June 30, 2021** regardless of the date this Agreement has been fully executed by each Party. Unless extended or terminated earlier in accordance with its terms, this Agreement shall expire on **June 30, 2023**. Agreement termination or expiration shall not extinguish or prejudice either Party's right to enforce this Agreement with respect to any default by the other Party that has not been cured.

This Agreement supersedes and replaces any previous delegations of authority under ORS 446.425, 448.100, and 624.510.

SECTION 4. AUTHORIZED REPRESENTATIVES

4.1 AGENCY'S AUTHORIZED REPRESENTATIVE IS:

Name: André Ourso
Title: Administrator, Center for Health Protection
Date: July 1, 2021
Phone: (971) 673-0403
Email: andre.ourso@state.or.us

4.2 LPHA'S AUTHORIZED REPRESENTATIVE IS:

Name: Philip Mason-Joyner
Title: Director, Clackamas County Health Department
Date: July 1, 2021
Phone: (503) 655-8384
Email: pmason@clackamas.us

4.3 A Party may designate a new Authorized Representative by written notice to the other Party.

SECTION 5. DEFINITIONS

Unless otherwise specified the definitions in ORS 431.003, 446.310, 448.005, 624.005, 624.010, 624.310 and OAR 333, Divisions 12, 14, 29 to 31, 60, 62, 150, 157, 158, 160, 162, 170, and 175 apply to this Agreement.

- “CLEHS” means the Conference of Local Environmental Health Supervisors.
- “CLHO” means the Conference of Local Health Officials.
- “FIPP” means the Foodborne Illness Prevention Program.
- “FPLHS” means the Food, Pool and Lodging Health and Safety Programs.
- “LPHA” means the Local Public Health Authority.

SECTION 6. LPHA’S REQUEST FOR DELEGATION AND OHA REVIEW OF REQUEST

By signing this Agreement, **Clackamas County** hereby requests delegation of the duties and functions of the Pool/Spa and Tourist Facilities programs. The requested delegation includes the following programs:

- The Tourist Facility program in ORS 446.310 to 446.350 pursuant to ORS 446.425(1); and
- The Pool/Spa program in ORS 448.005 to 448.090 except for plan review and approval under ORS 448.030 pursuant to ORS 448.100(1) and except for the authority to issue variances under ORS 448.037.

After receipt of the request above and prior to signing this Agreement, the Director of OHA will evaluate the LPHA to determine whether delegation is appropriate under the applicable statutes and rules. ORS 446.425, 448.100, and 624.510; Oregon Administrative Rules Chapter 333, Division 12. This determination is primarily based on findings from the most recent Triennial Review of the LPHA. By signing this Agreement, the Director of OHA hereby determines that delegation is appropriate as described in this Section.

SECTION 7. OHA RESPONSIBILITIES

OHA hereby delegates authority to administer the following programs to the LPHA:

- The Tourist Facility programs in accordance with 446.425.
- The Pool/Spa program in ORS 448.005 to 448.090 except for plan review and approval under ORS 448.030 and except for the authority to issue variances under ORS 448.037; and
- The restaurant, bed and breakfast facility, commissary, mobile unit and vending machine licensing programs to the LPHA in accordance with ORS 624.510.

To enable LPHA to carry out its delegated duties under this agreement, OHA shall:

- 7.1 Provide training to LPHA staff including at least one annual conference relating to the Food, Pool/Spa and Tourist Facilities programs and one virtual or in-person regional meeting. OHA will cover the costs for these meetings such as registration, room rental, food and beverages, and speaker fees but will not cover LPHA staff travel expenses (e.g. lodging, mileage, per diem beyond meals provided, etc.).
- 7.2 Provide a statewide licensing and inspection software application for use by LPHAs. OHA will provide support and technical assistance to users of the system. OHA will develop a communication protocol to provide direction on how to request support and technical assistance from contract vendors or FIPP staff.
- 7.3 Provide at no cost, printed materials required in statute or rule that are necessary to implement the programs and are listed on OHA General Requisition for 34-00A, such as but not limited to handwashing placards, compliance stickers, inspection forms, closure orders and license applications. OHA will consult with the Conference of Local Health Officials (CLHO) or its designee to determine additional printing needs.

- 7.4 Ensure access to electronic versions of the administrative rules, food handlers manuals and other educational materials.
- 7.5 Work with CLHO or its designee, using the Four-Factor Analysis adopted by the federal Department of Health and Human Services to determine which forms and documents need to be translated, and which forms and documents will be provided to the LPHA in printed form.
- In addition to CLHO, work with CLEHS using the following Four Factor analysis to determine which forms and documents need to be translated into other languages and applicable timelines. The Four Factors are:
- The number or proportion of limited English proficiency (LEP) persons eligible to be served or likely to be encountered by the LPHA;
 - The frequency with which LEP individuals come into contact with the LPHA's environmental health services program;
 - The nature and importance of the program, activity or service provided by the LPHA to its beneficiaries; and
 - The resources available to OHA and the costs of interpretation/translation services.
- 7.6 Provide consultation and technical assistance to LPHAs to support implementation of the administrative rules and other laws enforced by LPHA under this Agreement relating to the Food, Pool/Spa and Tourist Facility programs.
- 7.7 Provide FIPP standardization and certificate of completion to at least one person in each LPHA as required in OAR 333-012-0060(3).
- 7.8 (Reserved).
- 7.9 (Reserved)
- 7.10 Provide LPHA with information relating to the status of variance applications within the LPHA's jurisdiction and communicate when necessary with LPHA's Environmental Health Supervisor if the status changes.
- 7.11 In September of each year, OHA will provide LPHAs with a projected FPLHS program budget and a preliminary list of all LPHA remittance fees for the next fiscal year or biennium (depending where the date lands in the fiscal biennium). This budget and remittance information will be reviewed at a regularly scheduled CLHO meeting or designated subcommittee. A second report containing the final budget and remittance totals will be provided in April at a regularly scheduled CLHO meeting and designated subcommittee.
- 7.12 Provide a budget update for Food, Pool/Spa and Tourist Facilities Programs that includes expenditures and remaining balances. Reports will be provided to CLHO or its designee in April and October of each year.
- 7.13 In March of each year, convene a workgroup consisting of CLHO representatives (including CLEHS and CLHO or its designee), a local public health administrator and food service industry members to review and provide recommendations for the Annual Program Plan for FIPP, Public Pool/Spa and Tourist Facility Programs. OHA staff shall provide the workgroup, CLEHS and CLHO or its designee

with a report summarizing program activities from the previous year.

- 7.14 Consult with CLHO or its designee prior to any substantive modification to the Annual Foodborne Illness Prevention Program and Public Pool/Spa and Tourist Facility Program Plans and, in a timely manner, consult with CLHO or its designee regarding any other major changes to those programs that affect the LPHA, to the extent possible and feasible.
- 7.15 Provide personnel to LPHA to perform inspection services in the case of an emergency.
- 7.16 Comply with applicable provisions of ORS 446.310 to 446.350 and 446.990, ORS 448.005 to 448.090, ORS 624.010 to 624.121, 624.310 to 624.430, 624.650 and 624.992, OAR 333, Divisions 12, 14, 29 to 31, 60, 62, 150, 157, 158, 160, 162, 170, and 175.

SECTION 8. LPHA RESPONSIBILITIES

LPHA accepts OHA's delegation of authority to carry out the following programs:

- Tourist Facility program in ORS 446.310 to 446.350 and 446.990.
- The Pool/Spa program in ORS 448.005 to 448.090 except for plan review and approval under ORS 448.030 and except for the authority to issue variances under ORS 448.037; and
- Restaurant, bed and breakfast facility, commissary, mobile unit, warehouses and vending machine licensing programs in ORS 624.010 to 624.121, 624.310 to 624.430, 624.650 and 624.992.

Pursuant to OHA's delegation of authority, LPHA shall:

- 8.1 Carry out the statutes and rules of OHA relating to fee collection, inspections, enforcement and issuance and revocation of permits and licenses in compliance with standards for enforcement in ORS 446.310 to 446.350 and 446.990, ORS 448.005 to 448.090 (except for 448.030 and 448.307), ORS 624.010 to 624.121, 624.310 to 624.430, 624.650 and 624.992, OAR 333, Divisions 12, 29 to 31, 60, 62, 150, 157, 158, 160, 162, 170, and 175.
- 8.2 Not later than thirty (30) days following receipt of an invoice from OHA, remit the following licensing fees to OHA:
 - For the Tourist Facility program, fifteen percent (15%) of the state licensing fee or fifteen percent (15 %) of the county licensing fee, whichever is less, collected by county that quarter, in accordance with ORS 446.425.
 - For the Pool/Spa program, in the amount of \$45, for each license issued by the LPHA in that quarter under ORS 448.035 or such other amount agreed upon by the parties;
 - For the restaurant, bed and breakfast facility, commissary, mobile unit and warehouse licensing programs, a predetermined percentage of licensing revenue. For each biennium, this amount is determined by dividing OHA's food program costs by the total projected statewide licensing revenue. Statewide revenue is calculated using marker fees set forth in ORS 624.490.
 - (Biennial cost of FIPP / Total projected licensing revenue for the biennium for all LPHAs = Remittance Factor (Represented as a percentage.)) FIPP's biennial budget includes all program costs (i.e., staffing, fringe, travel, supplies, indirect costs, and statewide licensing software application). For the final invoice of a given fiscal year, LPHA may request an invoice in advance of the actual due date and pay the required licensing fees in advance.
 - For the fiscal biennium beginning July 1, 2021 and ending June 30, 2023, the remittance factor is 12.81% of licensing revenue, based on licensing fees in statute. (Biennial cost of

FIPP (\$2,328,526)/Total projected statewide licensing revenue for the biennium (\$18,179,220) =12.81%.)

- 8.3 Provide to OHA's Agreement Administrator with each quarterly remittance a written summary report that includes:
- The quarterly remittance amount due to support the FIPP. If the payment amount is greater or less than the fixed quarterly remittance payment, include both amounts; and
 - The total number of pool/spa licenses issued by the LPHA in the quarter for which the remittance is due; and
 - The total number of tourist facility licenses issued by the LPHA in the quarter for which the remittance is due, including the number of spaces for recreation parks.
- 8.4 Use or be transitioning toward the use of the statewide licensing software within 12 months of OHA notifying LPHAs that it has signed a contract with the service provider, if the LPHA is not already using this software.
- 8.5 Provide to OHA information required to produce Licensed Facility Statistics Reports (Stats Report) by February 28 of each year. Information required includes-the number of complaints by type, foodborne illness outbreak investigations conducted, enforcement actions taken, number of food handler cards issued, number of food service managers trained, environmental health FTE information for Food, Pool/Spa and Tourist Facility Programs, number of OHA-standardized staff and number of staff with National Swimming Pool Foundation-certified pool operator training or equivalent.
- 8.6 All licensing fees for food, pool/spa and tourist facilities as well as food handler certification fees collected by the LPHA are to be used to support the respective programs at the local and state level and cannot be used to support any other activities.

SECTION 9. ACCOUNTING

OHA may request that the LPHA provide an accounting of the fees collected pursuant to this Agreement for the previous three years and the LPHA and/or its subcontractor's expenditures of those fees to ensure the fees were expended only for the duties and functions delegated to the LPHA under this Agreement. Licensing fees must be used for inspection and related administration purposes only, including direct and indirect costs for the program. If an LPHA terminates this Agreement, any fees collected for inspections that the LPHA has not spent on services performed under this Agreement shall be returned to OHA within thirty days of termination.

SECTION 10. CONFLICT RESOLUTION

The Parties agree to meet, in person if possible, to discuss any conflict that arises between the Parties concerning this Agreement and to work in good faith to resolve the matter in a way that is mutually agreeable.

SECTION 11. REVIEW OF AGREEMENT

The Parties will review this Agreement every five years or sooner upon the agreement of both Parties.

SECTION 12. SUSPENSION AND TERMINATION

- 12.1 Either Party may terminate this Agreement upon 180 days written notice to the other Party.
- 12.2 OHA may terminate this Agreement in accordance with OAR 333-012-0070(6) to (8).
- 12.3. If the delegations in this Agreement are suspended or terminated the LPHA must return any unexpended portion of the fees collected by the LPHA or its subcontractor under ORS 446.425(2), 448.100(2) and 624.510(2) to OHA for carrying out the powers, duties and functions under ORS 446, 448 and 624. For purposes of this paragraph any unexpended portion of the fees collected includes licensing fees collected for a given licensing year minus credits determined by OHA for inspections performed by the LPHA or its subcontractor, as documented in the statewide licensing database.

- 12.4 The LPHA may terminate this Agreement if the LPHA requests a transfer of the LPHA's responsibilities to OHA in accordance with ORS 431.382, but such a termination does not take effect until 180 days after OHA receives the request, unless otherwise agreed to by OHA and the LPHA.
- 12.5 Upon termination of this Agreement, LPHA shall have no further obligation to make remittance payments to OHA under this Agreement, except as specified in paragraph 11.3.
- 12.6 Any termination of this Agreement shall not prejudice any obligations or liabilities of either Party accrued prior to such termination.

SECTION 13. AMENDMENTS

- 13.1 The terms of this Agreement may not be waived, altered, modified, supplemented or otherwise amended, in any manner whatsoever, except by written mutual agreement of the Parties.
- 13.2 This Agreement must be amended if the percentages or formulas for remittance in Section 8.2 change.

SECTION 14. NOTICE

Except as otherwise expressly provided in this Agreement, any notices to be given relating to this Agreement shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid, to a Party's Authorized Representative at the address or number set forth in this Agreement, or to such other addresses or numbers as a Party may indicate pursuant to this section.

SECTION 15. SURVIVAL

All rights and obligations shall cease upon termination of this Agreement, except for those rights and obligations that by their nature or express terms survive termination of this Agreement. Termination shall not prejudice any rights or obligations accrued to the Parties prior to termination.

SECTION 16. SEVERABILITY

The Parties agree that 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 shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

SECTION 17. COUNTERPARTS

This Agreement may be executed in several counterparts, all of which when taken together shall constitute one agreement, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the Agreement so executed shall constitute an original.

SECTION 18. LIABILITY AND INSURANCE

The LPHA and its employees or contractors in carrying out the functions and duties delegated in this agreement have the sole right of control as to the physical details of the manner of performance of the inspections to be conducted. The LPHA further understands and agrees that its employees or contractors carrying out the functions and duties delegated in this agreement will be properly trained by the LPHA with regard to the applicable statutes and rules of OHA relating to the delegated programs.

Contribution. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against a party (the "Notified Party") with respect to which the other party ("Other Party") may have liability, the Notified Party must promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Either party is entitled to participate in the defense of a Third-Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this paragraph and meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own

choosing are conditions precedent to the Other Party's liability with respect to the Third Party Claim.

With respect to a Third Party Claim for which the State is jointly liable with the LPHA (or would be if joined in the Third Party Claim), OHA shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the LPHA in such proportion as is appropriate to reflect the relative fault of OHA on the one hand and of the LPHA on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of OHA on the one hand and of the LPHA on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. OHA's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if the State had sole liability in the proceeding.

With respect to a Third Party Claim for which the LPHA is jointly liable with OHA (or would be if joined in the Third Party Claim), the LPHA shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by OHA in such proportion as is appropriate to reflect the relative fault of the LPHA on the one hand and of OHA on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the LPHA on the one hand and of OHA on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The LPHA's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if it had sole liability in the proceeding.

LPHA shall require subcontractors to maintain insurance as set forth in Exhibit A ("Subcontractor Insurance Requirements") which is attached hereto.

SECTION 19. DAS REPORTING REQUIREMENT

The Parties agree that OHA shall be the Reporting Party for purposes of ORS 190.115, Summaries of Agreements of State Agencies. OHA shall submit a summary of this Agreement to the Oregon Department of Administrative Services through the electronic Oregon Procurement Information Network (ORPIN), within the 30-day period immediately following the Effective Date of the Agreement.

SECTION 20. RECORDS

The Parties shall create and maintain records documenting their performance under this Agreement. The Oregon Secretary of State's Office, the federal government, the other Party, and their duly authorized representatives shall have access to the books, documents, papers, and records of a Party that are directly related to this Agreement for the purposes of making audit, examination, excerpts, and transcripts for a period of six years after termination of this Agreement.

SECTION 21. NO THIRD-PARTY BENEFICIARIES

OHA and LPHA 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.

SECTION 22. MERGER, WAIVER AND MODIFICATION

This Agreement and all exhibits and attachments, if any, constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties. Such waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given.

SECTION 23. SUBCONTRACTS AND ASSIGNMENT

23.1 If LPHA intends to contract with a person to perform services or activities required under this Agreement, such person may not perform any function, duty or power of the LPHA related to governance as that is described in OAR 333-014-0580. LPHA must provide notice to OHA in accordance with OAR 333-014-0570(2) and (5) and subcontracts must comply with OAR 333-014-0570(4).

23.2 Neither Party may assign, delegate or transfer any of its rights or obligations under this Agreement.

SECTION 24. INDEMNIFICATION BY SUBCONTRACTORS.

LPHA shall take all reasonable steps to cause its contractor(s) that are not units of local government as defined in ORS 190.003, if any, to 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 now or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of LPHA’s 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.

SECTION 25. ADDITIONAL PROVISIONS

25.1 Vendor or Sub-Recipient Determination.

In accordance with the State Controller’s Oregon Accounting Manual, policy 30.40.00.102, OHA’s determination is that:

LPHA is a sub-recipient LPHA is a vendor Not applicable

Catalog of Federal Domestic Assistance (CFDA) #(s) of federal funds to be paid through this Agreement: (Not Applicable)

25.2 LPHA Data and Certification.

a. LPHA Information. LPHA shall provide information set forth below. This information is requested pursuant to ORS 305.385.

PLEASE PRINT OR TYPE THE FOLLOWING INFORMATION:

LPHA Name (exactly as filed with the IRS): _____

Street address: _____

City, state, zip code: _____

Email address: _____

Telephone: _____

()

Facsimile: ()

Federal Employer Identification Number: _____

Proof of Insurance:

Workers’ Compensation Insurance Company: _____

Policy #: _____ Expiration Date: _____

The above information must be provided prior to Agreement approval. LPHA shall provide proof of Insurance upon request by OHA or OHA designee.

b. Certification. The LPHA acknowledges that the Oregon False Claims Act, ORS 180.750 to 180.785, applies to any “claim” (as defined by ORS 180.750) that is made by (or caused by) the LPHA and that pertains to this Agreement or to the project for which the Agreement work is being performed. The LPHA certifies that no claim described in the previous sentence is or will be a “false claim” (as defined by ORS 180.750) or an act prohibited by ORS 180.755. LPHA further acknowledges that in addition to the remedies under this Agreement, if it makes (or causes to be made) a false claim or performs (or causes to be performed) an act prohibited under the Oregon False Claims Act, the Oregon Attorney General may enforce the liabilities and penalties provided by the Oregon False Claims Act against the LPHA. Without limiting the generality of the foregoing, by signature on this Agreement, the LPHA hereby certifies that:

- (1) The information shown in Section 25.2 a, LPHA Information, is LPHA’s true, accurate and correct information;
- (2) To the best of the undersigned’s knowledge, LPHA has not discriminated against and will not discriminate against minority, women or emerging small business enterprises certified under ORS 200.055 in obtaining any required subcontracts;
- (3) LPHA and LPHA’s employees and agents are not included on the list titled “Specially Designated Nationals” maintained by the Office of Foreign Assets Control of the United States Department of the Treasury and currently found at:
<https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>;
- (4) LPHA is not listed on the non-procurement portion of the General Service Administration’s “List of Parties Excluded from Federal procurement or Non-procurement Programs” found at: <https://www.sam.gov/portal/public/SAM/>; and
- (5) LPHA is not subject to backup withholding because:
 - (a) LPHA is exempt from backup withholding;
 - (b) LPHA has not been notified by the IRS that LPHA is subject to backup withholding as a result of a failure to report all interest or dividends; or
 - (c) The IRS has notified LPHA that LPHA is no longer subject to backup withholding.

c. LPHA is required to provide its Federal Employer Identification Number (FEIN). By LPHA’s signature on this Agreement, LPHA hereby certifies that the FEIN provided to OHA is true and accurate. If this information changes, LPHA is also required to provide OHA with the new FEIN within 10 days.

EACH PARTY, BY EXECUTION OF THIS AGREEMENT, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

Signatures.

Clackamas County, by and through its Department of Environmental Health:

By:

Authorized Signature

Title

Date

State of Oregon, acting by and through its Oregon Health Authority, pursuant to ORS 190

By:

Authorized Signature

Title

Date

Approved for Legal Sufficiency:

Approved via email by:

Shannon Ofallon, Assistant Attorney General

June 29, 2021

Assistant Attorney General

Date

OHA Program Representative:

Approved via email by:

Brett W. Sherry, Program Manager, Regulatory Unit, Public Health Division

July 23, 2021

Authorized Signature

Title

Date

**OREGON HEALTH AUTHORITY
INTERGOVERNMENTAL AGREEMENT
FOR ENVIRONMENTAL HEALTH SERVICES**

EXHIBIT A

SUBCONTRACTOR INSURANCE REQUIREMENTS

LPHA shall require its first tier contractor(s) (Contractor) that are not units of local government as defined in ORS 190.003, if any, to: i) obtain insurance specified under TYPES AND AMOUNTS and meeting the requirements under ADDITIONAL INSURED, "TAIL" COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before the contractors perform under contracts between the LPHA and the contractors (the "Subcontracts"), and ii) maintain the insurance in full force throughout the duration of the Subcontracts. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to OHA. The LPHA shall not authorize contractors to begin work under the Subcontracts until the insurance is in full force. Thereafter, LPHA shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. The LPHA shall incorporate appropriate provisions in the Subcontracts permitting it to enforce contractor compliance with the insurance requirements and shall 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 or terminating the Subcontracts as permitted by the Subcontracts, or pursuing legal action to enforce the insurance requirements. In no event shall the LPHA permit a contractor to work under a Subcontract when the LPHA is aware that the contractor is not in compliance with the insurance requirements. As used in this Exhibit, a "first tier" contractor is a contractor with which the LPHA directly enters into a contract. It does not include a subcontractor with which the Contractor enters into a contract.

TYPES AND AMOUNTS

WORKERS' COMPENSATION & EMPLOYERS' LIABILITY

All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Contractor shall require and ensure that each of its subcontractors complies with these requirements. If Contractor is a subject employer, as defined in ORS 656.023, Contractor shall also obtain employers' liability insurance coverage with limits not less than \$500,000 each accident. If contractor is an employer subject to any other state's workers' compensation law, Contractor shall provide workers' compensation insurance coverage for its employees as required by applicable workers' compensation laws including employers' liability insurance coverage with limits not less than \$500,000 and shall require and ensure that each of its out-of-state subcontractors complies with these requirements.

COMMERCIAL GENERAL LIABILITY:

Required **Not required**

Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverage that are satisfactory to the State. This insurance shall include personal and advertising injury liability, products and completed operations, contractual liability coverage for the indemnity provided under this contract, and have no limitation of coverage to designated premises, project or operation. Coverage shall be written on an occurrence basis in an amount of not less than \$ 1,000,000 per occurrence. Annual aggregate limit shall not be less than \$ 2,000,000.

AUTOMOBILE LIABILITY INSURANCE:

Required **Not required**

Automobile Liability Insurance covering Contractor's business use including coverage for all owned, non-owned,

or hired vehicles with a combined single limit of not less than \$ 1,000,000 for bodily injury and property damage. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for Commercial General Liability and Automobile Liability). Use of personal automobile liability insurance coverage may be acceptable if evidence that the policy includes a business use endorsement is provided.

PROFESSIONAL LIABILITY:

Required **Not required**

Professional Liability insurance covering any damages caused by an error, omission or any negligent acts related to the services to be provided under this Contract by the Contractor and Contractor's subcontractors, agents, officers or employees in an amount not less than \$ 1,000,000 per claim. Annual aggregate limit shall not be less than \$ 2,000,000. If coverage is on a claims made basis, then either an extended reporting period of not less than 24 months shall be included in the Professional Liability insurance coverage, or the Contractor shall provide Tail Coverage as stated below.

EXCESS/UMBRELLA INSURANCE:

A combination of primary and excess/umbrella insurance may be used to meet the required limits of insurance.

ADDITIONAL COVERAGE REQUIREMENTS:

Contractor's insurance shall be primary and non-contributory with any other insurance. Contractor shall pay for all deductibles, self-insured retention and self-insurance, if any.

ADDITIONAL INSURED:

All liability insurance, except for Workers' Compensation, Professional Liability, and Network Security and Privacy Liability (if applicable), required under this Subcontract must include an additional insured endorsement specifying the State of Oregon, its officers, employees and agents as Additional Insureds, including additional insured status with respect to liability arising out of ongoing operations and completed operations, but only with respect to Contractor's activities to be performed under this Contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance. The Additional Insured endorsement with respect to liability arising out of your ongoing operations must be on ISO Form CG 20 10 07 04 or equivalent and the Additional Insured endorsement with respect to completed operations must be on ISO form CG 20 37 07 04 or equivalent.

WAIVER OF SUBROGATION:

Contractor shall waive rights of subrogation which Contractor or any insurer of Contractor may acquire against the OHA or State of Oregon by virtue of the payment of any loss. Contractor will obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the OHA has received a waiver of subrogation endorsement from the Contractor or the Contractor's insurer(s).

TAIL COVERAGE:

If any of the required insurance is on a claims made basis and does not include an extended reporting period of at least 24 months, 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 this Subcontract, for a minimum of 24 months following the later of (i) Contractor's completion and LPHA's acceptance of all Services required under this Subcontract, or, (ii) LPHA's or Contractor termination of contract, or, iii) The expiration of all warranty periods provided under this Subcontract.

CERTIFICATE(S) AND PROOF OF INSURANCE:

The LPHA shall obtain from the Contractor a Certificate(s) of Insurance for all required insurance before delivering any Goods and performing any Services required under this Contract. The Certificate(s) shall list the State of Oregon, its officers, employees and agents as a Certificate holder and as an endorsed Additional Insured. The Certificate(s) shall also include all required endorsements or copies of the applicable policy language

effecting coverage required by this contract. If excess/umbrella insurance is used to meet the minimum insurance requirement, the Certificate of Insurance must include a list of all policies that fall under the excess/umbrella insurance. As proof of insurance OHA has the right to request copies of insurance policies and endorsements relating to the insurance requirements in Exhibit A.

NOTICE OF CHANGE OR CANCELLATION:

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

INSURANCE REQUIREMENT REVIEW:

Contractor agrees to periodic review of insurance requirements by OHA under this agreement and to provide updated requirements as mutually agreed upon by Contractor and OHA.

STATE ACCEPTANCE:

All insurance providers are subject to OHA acceptance. If requested by OHA, Contractor shall provide complete copies of insurance policies, endorsements, self-insurance documents and related insurance documents to OHA's representatives responsible for verification of the insurance coverages required under this Exhibit A.

September 16, 2021

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Sub-recipient Professional Services Agreement with Cascade AIDS Project
for Human Immunodeficiency Virus (HIV) Testing and Counseling Services

Purpose/Outcomes	Provide HIV testing, counseling, and outreach to Clackamas County population.
Dollar Amount and Fiscal Impact	The maximum Agreement value is \$75,000.
Funding Source	Funding provided by the State of Oregon - Oregon Health Authority. No County General Funds are involved.
Duration	Effective upon signature and terminates on June 30, 2022
Previous Board Action	No Previous Board Actions have been taken.
Strategic Plan Alignment	1. Improved Community Safety and Health 2. Ensure safe, healthy and secure communities
Counsel Review	County counsel has reviewed and approved this document on June 28, 2021 Counsel staff: AN
Contact Person	Rodney A. Cook, Interim Public Health Director – 503-650-5694
Contract No.	10127

BACKGROUND:

The Clackamas County Public Health Division (CCPHD) of the Health, Housing & Human Services Department requests the approval of a Sub-recipient Professional Services Agreement with Cascade AIDS Project for HIV Testing and Counseling Services. The County receives pass through funding through the Local Public Health Authority Agreement (LPHA) with the State of Oregon. This funding is a mix of federal and state funding. The County contracts with Cascade AIDS Project to manage the HIV program.

This Agreement has a maximum value of \$75,000. This Agreement is effective upon signature and continues through June 30, 2022.

RECOMMENDATION:

Staff recommends the Board of County Commissioner's approve this Agreement.

Respectfully submitted,



For Rodney A. Cook
Rodney A. Cook, Interim Director
Health, Housing, and Human Services

CLACKAMAS COUNTY, OREGON SUBRECIPIENT GRANT AGREEMENT #22-014	
Project Name: HIV Testing – Contract #10127	
Project Number: 40063	
This Agreement is between Clackamas County , a political subdivision of the State of Oregon, acting by and through its Department of Health, Housing and Human Services, Public Health Division (“COUNTY”) and Cascade AIDS Project (CAP) (“SUBRECIPIENT”), an Oregon Nonprofit Organization.	
Clackamas County Data	
Grant Accountant: Sherry Olson	Program Manager: Anna Summer
Clackamas County – Public Health Division 2051 Kaen Road, Suite 367 Oregon City, OR 97045 Phone: (503) 742-5342 Email: SOlson4@co.clackamas.or.us	Clackamas County – Public Health Division 2051 Kaen Road, Suite 367 Oregon City, OR 97045 Phone: (503) 742-5382 Email: ASummer@co.clackamas.or.us
Subrecipient Data	
Finance/Fiscal Representative: John Domingo, CFO	Program Representative: Chris Altavilla
Cascade AIDS Project (CAP) 520 NW Davis St., Suite 215 Portland, OR 97209 Phone: Email: jdomingo@capnw.org.org	Cascade AIDS Project (CAP) 520 NW Davis St., Suite 215 Portland, OR 97209 Phone: (480) 215-5287 Email: Chris@prismhealth.org
DUNS: 867947061	

RECITALS

1. COUNTY has an Intergovernmental Agreement (“IGA”) for the Financing of Public Health Services through its Public Health Division, the entity designated, pursuant to ORS 431.110, 431.115 AND 431.413 as the Local Public Health Authority for Clackamas County (“LPHA”) and the State of Oregon acting by and through its Oregon Health Authority (“OHA”) for the biennium period 2019-2021. SUBRECIPIENT desires to partner with COUNTY to fulfill the objectives of such IGA, which includes Program Element 07 for HIV Prevention Services. Funds provided under this Agreement for such Program Element may only be used in accordance with and subject to the requirements and limitations for the following services and appropriate costs associated with the delivery of such services (Services):
 - a. Confidential HIV counseling, rapid testing, and referral services;
 - b. Other HIV prevention services with evidence of effectiveness to identified high-risk populations in COUNTY’s service area; and
 - c. Structural activities that facilitate the delivery of HIV prevention services to high-risk populations in COUNTY’s service area.

2. Priority populations for service focus in Oregon are identified in the current Integrated HIV Prevention and Care Plan Guidance found at: <https://hab.hrsa.gov/sites/default/files/hab/Global/hivpreventionplan062015.pdf>. Funds awarded

CASCADE AIDS PROJECT (CAP) – 22-014
Subrecipient Grant Agreement #10127
Page 2 of 31

under this Agreement may only be expended on Services included in COUNTY's HIV Prevention Program Model Plan that has been approved by the Department of Human Services ("DHS") HIV Prevention Program, with an emphasis focused predominantly on services for the high-risk populations identified above.

3. Project description: Expand HIV client-centered counseling, testing and referral services ("CTRS") and continue to provide outreach to CTRS to sexual and social networks of men who have sex with men ("MSM") and other priority populations who reside in Clackamas County.
4. This Grant Agreement of Federal financial assistance sets forth the terms and conditions pursuant to which SUBRECIPIENT agrees on delivery of the Program. NOW THEREFORE, according to the terms of this Subrecipient Grant Agreement (this "Agreement") COUNTY and SUBRECIPIENT agree as follows:

AGREEMENT

1. **Term and Effective Date.** This Agreement shall become effective on the date it is fully executed and approved as required by applicable law. Funds issued under this Agreement may be used to reimburse subrecipient for expenses approved in writing by COUNTY relating to the project incurred no earlier than **July 1, 2021** and not later than **June 30, 2022**, unless this Agreement is sooner terminated or extended pursuant to the terms hereof. No grant funds are available for expenditures after the expiration date of this Agreement.
2. **Program.** The Program is described in Attached Exhibit A: Subrecipient Statement of Program Objectives. SUBRECIPIENT agrees to carry out the program in accordance with the terms and conditions of this Agreement.
3. **Standards of Performance.** SUBRECIPIENT shall perform all activities and programs in accordance with the requirements set forth in this Agreement and all applicable laws and regulations. Furthermore, SUBRECIPIENT shall comply with the requirements of the 2020-2021 State of Oregon Intergovernmental Agreement by and through the Oregon Health Authority for the Financing of Public Health Services and the U.S. Department of Health and Human Services, that is the source of the grant funding, in addition to compliance with requirements of Title 45 of the *Code of Federal Regulations*, Part 75. A copy of the applicable sections of the grant award has been provided to SUBRECIPIENT by COUNTY. A complete copy of the 2020-2021 State of Oregon Intergovernmental Agreement by and through the Oregon Health Authority will be provided upon request by SUBRECIPIENT. SUBRECIPIENT shall further comply with any requirements required by the State of Oregon, Department of Human Services, 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.** The maximum, not to exceed, amount COUNTY will pay is \$75,000. COUNTY's funding for this Agreement is the Oregon Health Authority 2021-2023. Intergovernmental Agreement [#159803] for HIV Prevention Activities for Health Departments. Funding between sources is distributed as follows:
 - Federal Pass through funds (\$45,000.00) [U.S. Department of Health and Human Services; **CFDA 93.940**].
 - Oregon Health Authority State funds (\$30,000.00)
5. **Amendments.** The terms of this Agreement shall not be waived, altered, modified, supplemented, or

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amended, in any manner whatsoever, except by written instrument signed by both parties.

SUBRECIPIENT must submit a written request including a justification for any amendment to COUNTY in writing at least forty five (45) calendar days before this Agreement expires. No payment will be made for any services performed before the beginning date or after the expiration date of this Agreement. If the maximum compensation amount is increased by amendment, the amendment must be fully executed before SUBRECIPIENT performs work subject to the amendment.

6. **Termination.** This Agreement may be suspended or terminated prior to the expiration of its term by:
- Written notice provided by COUNTY resulting from material failure by SUBRECIPIENT to comply with any term of this Agreement, or;
 - Mutual agreement by COUNTY and SUBRECIPIENT.
 - Written notice provided by COUNTY determining funds are no longer available for this purpose.
 - Written notice provided by COUNTY that it lacks sufficient funds, as determined by COUNTY in its sole discretion, to continue to perform under this Agreement.

Upon completion of improvements or upon termination of this Agreement, any unexpended balances of funds shall remain with COUNTY.

7. **Effect of Termination.** The expiration or termination of this Agreement, for any reason, shall not release SUBRECIPIENT from any obligation or liability to COUNTY, or any requirement or obligation that:
- Has already accrued hereunder;
 - Comes into effect due to the expiration or termination of the Agreement; or
 - Otherwise survives the expiration or termination of this Agreement.
8. **Funds Available and Authorized.** COUNTY certifies that funds sufficient to pay for this Agreement have been obligated to COUNTY. SUBRECIPIENT understands and agrees that payment of amounts under this Agreement is contingent on COUNTY receiving appropriations or other expenditure authority sufficient to allow COUNTY, in the exercise of its sole administrative discretion, to continue to make payments under this Agreement.
9. **Future Support.** COUNTY makes no commitment of future support and assumes no obligation for future support for the activity contracted herein except as set forth in Section 7.
10. **Administrative Requirements.** SUBRECIPIENT agrees to its status as a subrecipient, and accepts among its duties and responsibilities the following:

- Financial Management.** SUBRECIPIENT shall comply with 2 CFR Part 200, Subpart D—Post Federal Award Requirements, and agrees to adhere to the accounting principles and procedures required therein, use adequate internal controls, and maintain necessary sources documentation for all costs incurred.
- Revenue Accounting.** Grant revenue and expenses generated under this Agreement should be recorded in compliance with generally accepted accounting principles and/or governmental accounting standards. This requires that the revenues are treated as unearned income or “deferred” until the compliance requirements and objectives of the grant have been met. Revenue may be recognized throughout the life cycle of the grant as the funds are “earned.” All grant revenues not fully earned and expended in compliance with the requirements and objectives at the end of the period of performance must be returned to the County within 15 days.
- Change in Key Personnel.** SUBRECIPIENT is required to notify COUNTY, in writing, whenever there is a change in SUBRECIPIENT key administrative or programmatic personnel and the reason for the change. Key personnel include but are not limited to: Executive Director, Finance Director, Program Manager, Bookkeeper, or any equivalent to these positions within the organization.
- Cost Principles.** SUBRECIPIENT shall administer the award in conformity with 2 CFR 200, Subpart E. These cost principles must be applied for all costs incurred whether charged on a direct or indirect basis. Costs disallowed by the Federal government shall be the liability of SUBRECIPIENT.

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- e. **Period of Availability.** SUBRECIPIENT may charge to the award only allowable costs resulting from obligations incurred during the funding period.
- f. **Match.** Matching funds are not required for this Agreement.
- g. **Budget.** SUBRECIPIENT use of funds may not exceed the amounts specified in the Exhibit B: Subrecipient Program Budget. SUBRECIPIENT may not transfer grant funds between budget lines without the prior written approval of COUNTY. At no time may budget modification change the scope of the original grant application or Agreement.
- h. **Indirect Cost Recovery.** A non-federally-funded indirect cost rate of 8.7% is provided to SUBRECIPIENT and is incorporated by reference into Exhibit B: SUBRECIPIENT BUDGET.
- i. **Research and Development.** SUBRECIPIENT certifies that this award is not for research and development purposes.
- j. **Payment.** SUBRECIPIENT must submit a final request for payment no later than fifteen (15) days after the end date of this Agreement. Routine requests for reimbursement should be submitted as specified in Exhibit D: Required Financial Reporting and Reimbursement Request.
- k. **Performance Reporting.** SUBRECIPIENT must submit Performance Reports as specified in Exhibit E for each period (monthly, quarterly, and final) during the term of this Agreement.
- l. **Financial Reporting.** Methods and procedures for payment shall minimize the time elapsing between the transfer of funds and disbursement by the grantee or SUBRECIPIENT, in accordance with Treasurer regulations at 31 CFR Part 205. Therefore, upon execution of this Agreement, SUBRECIPIENT will submit completed Exhibit D: Required Financial Reporting and Reimbursement Request on a monthly basis.
- m. **Closeout.** COUNTY will closeout this award when COUNTY determines that all applicable administrative actions and all required work have been completed by SUBRECIPIENT, pursuant to 2 CFR 200.343—Closeout. SUBRECIPIENT must liquidate all obligations incurred under this award and must submit all financial (Exhibits F, G & H), performance, and other reports as required by the terms and conditions of the Federal award and/or COUNTY, no later than 90 calendar days after the end date of this agreement. At closeout, SUBRECIPIENT must account for all equipment with remaining value over \$5,000 and residual supplies valued over \$5,000 in the aggregate that were purchased with Federal funds authorized by this Agreement. Compensation to the Federal Agency may be required for equipment or residual supplies valued over \$5,000 per 2 CFR 200.313 & 314.
- n. **Universal Identifier and Contract Status.** SUBRECIPIENT shall comply with 2 CFR 25.200-205 and apply for a unique universal identification number using the Data Universal Numbering System (“DUNS”) as required for receipt of funding. In addition, SUBRECIPIENT shall register and maintain an active registration in the Central Contractor Registration database, now located at <http://www.sam.gov>.
- o. **Suspension and Debarment.** SUBRECIPIENT shall comply with 2 CFR 180.220 and 901. This common rule restricts sub awards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities. SUBRECIPIENT is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. SUBRECIPIENT may access the Excluded Parties List System at <http://www.sam.gov>. The Excluded Parties List System contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Orders 12549 and 12689. Awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.
- p. **Lobbying.** SUBRECIPIENT certifies (Exhibit C: Lobbying) that no portion of the Federal grant funds will be used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law and shall abide by 2 CFR 200.450 and the Byrd Anti-Lobbying Amendment 31 U. S. C. 1352. In addition, SUBRECIPIENT certifies that it is a

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nonprofit organization described in Section 501(c) (4) of the Code, but does not and will not engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act.

- q. **Audit.** SUBRECIPIENT shall comply with the audit requirements prescribed in the Single Audit Act Amendments and the new Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, located in 2 CFR 200.501. SUBRECIPIENT expenditures of \$750,000 or more in Federal funds require an annual Single Audit. SUBRECIPIENT is required to hire an independent auditor qualified to perform a Single Audit. Subrecipients of Federal awards are required under the Uniform Guidance to submit their audits to the Federal Audit Clearinghouse (“FAC”) within 9 months from SUBRECIPIENT’S fiscal year end or 30 days after issuance of the reports, whichever is sooner. The website for submissions to the FAC is <https://harvester.census.gov/facweb/>. At the time of submission to the FAC, SUBRECIPIENT will also submit a copy of the audit to COUNTY. If requested and if SUBRECIPIENT does not meet the threshold for the Single Audit requirement, SUBRECIPIENT shall submit to COUNTY a financial audit or independent review of financial statements within 9 months from SUBRECIPIENT’S fiscal year end or 30 days after issuance of the reports, whichever is sooner.
- r. **Monitoring.** SUBRECIPIENT agrees to allow COUNTY access to conduct site visits and inspections of financial records for the purpose of monitoring in accordance with 2 CFR 200.331. COUNTY, the Federal government, and their duly authorized representatives shall have access to such financial records and other books, documents, papers, plans, records of shipments and payments and writings of SUBRECIPIENT that are pertinent to this Agreement, whether in paper, electronic or other form, to perform examinations and audits and make excerpts and transcripts. Monitoring may be performed onsite or offsite, at COUNTY’S discretion. Depending on the outcomes of the financial monitoring processes, this Agreement shall either a) continue pursuant to the original terms, b) continue pursuant to the original terms and any additional conditions or remediation deemed appropriate by COUNTY, or c) be de-obligated and terminated.
- s. **Record Retention.** SUBRECIPIENT will retain and keep accessible all such financial records, books, documents, papers, plans, records of shipments and payments and writings for a minimum of three (3) years, or such longer period as may be required by the Federal agency or applicable state law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later, according to 2 CFR 200.333-337.
- t. **Fiduciary Duty.** SUBRECIPIENT acknowledges that it has read the award conditions and certifications for contained in the State of Oregon Grant Intergovernmental Agreement, that it understands and accepts those conditions and certifications, and that it agrees to comply with all the obligations, and be bound by any limitations applicable to COUNTY, as grantee, under those grant documents.
- u. **Failure to Comply.** SUBRECIPIENT acknowledges and agrees that this Agreement and the terms and conditions therein are essential terms in allowing the relationship between COUNTY and SUBRECIPIENT to continue, and that failure to comply with such terms and conditions represents a material breach of the original grant and this Agreement. Such material breach shall give rise to COUNTY’S right, but not obligation, to withhold RECIPIENT grant funds until compliance is met, terminate this Agreement and all associated amendments, reclaim grant funds in the case of omissions or misrepresentations in financial or programmatic reporting, require repayment of any funds used by SUBRECIPIENT 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

11. Compliance with Applicable Laws

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

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administrative rules established pursuant to the foregoing laws; and (ix) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations; and 2 CFR Part 200 as applicable to SUBRECIPIENT.

- b. **Clean Air Act** (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). SUBRECIPIENT agrees that if this Agreement is in excess of \$150,000, the recipient agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, 42 U.S.C. 7401 et seq., and the Federal Water Pollution Control Act, as amended 33 U.S.C. 1251 et seq. Violations shall be reported to the awarding Federal Department and the appropriate Regional Office of the Environmental Protection Agency.
- c. **State Statutes.** SUBRECIPIENT expressly agrees to comply with all statutory requirements, laws, rules, and regulations issued by the State of Oregon, to the extent they are applicable to the Agreement.
- d. **Conflict Resolution.** If potential, actual or perceived conflicts are discovered among federal, state and local statutes, regulations, administrative rules, executive orders, ordinances or other laws applicable to the Services under the Agreement, SUBRECIPIENT may in writing request County to resolve the conflict. SUBRECIPIENT shall specify if the conflict(s) create a problem for the design or other Services required under the Agreement. The County shall undertake reasonable efforts to resolve the issue but is not required to deliver any specific answer or product. SUBRECIPIENT shall remain obligated to independently comply with all applicable laws and no action by COUNTY shall be deemed a guarantee, waiver, or indemnity for non-compliance with any law.
- e. **Disclosure of Information.** Any confidential or personally identifiable information (2 CFR 200.82) acquired by SUBRECIPIENT during the execution of the project should not be disclosed during or upon termination or expiration of this Agreement for any reason or purpose without the prior written consent of COUNTY. SUBRECIPIENT further agrees to take reasonable measures to safeguard such information (2 CFR 200.303) and to follow all applicable federal, state and local regulations regarding privacy and obligations of confidentiality.
- f. **Mileage reimbursement.** If mileage reimbursement is authorized in SUBRECIPIENT budget or by the written approval of COUNTY, mileage must be paid at the rate established by SUBRECIPIENT's written policies covering all organizational mileage reimbursement or at the IRS mileage rate at the time of travel, whichever is lowest.
- g. **Human Trafficking.** In accordance with 2 CFR Part 175, SUBRECIPIENT, its employees, contractors and subrecipients under this Agreement and their respective employees may not:
 - Engage in severe forms of trafficking in persons during the period of the time the award is in effect;
 - Procure a commercial sex act during the period of time the award is in effect; or
 - Used forced labor in the performance of the Agreement or sub award under this Agreement.

SUBRECIPIENT must inform COUNTY immediately of any information SUBRECIPIENT receives from any source alleging a violation of any of the above prohibitions in the terms of this Agreement. COUNTY may terminate this Agreement, without penalty, for violation of these provisions. COUNTY's right to terminate this Agreement unilaterally, without penalty, is in addition to all other remedies under this Agreement. SUBRECIPIENT must include these requirements in any sub award made to public or private entities under this Agreement.

12. Federal and State Procurement Standards

- a. All procurement transactions, whether negotiated or competitively bid and without regard to dollar value, shall be conducted in a manner so as to provide maximum open and free competition. All

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sole-source procurements must receive prior written approval from COUNTY in addition to any other approvals required by law applicable to SUBRECIPIENT. Justification for sole-source procurement should include a description of the project and what is being contracted for, an explanation of why it is necessary to contract noncompetitively, time constraints and any other pertinent information. Interagency agreements between units of government are excluded from this provision.

- b. COUNTY's performance under the Agreement is conditioned upon SUBRECIPIENT's compliance with, and SUBRECIPIENT shall comply with, the obligations applicable to public contracts under the Oregon Public Contracting Code and applicable Local Contract Review Board rules, which are incorporated by reference herein.
- c. SUBRECIPIENT must maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award and administration of contracts. If SUBRECIPIENT has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, SUBRECIPIENT must also maintain written standards of conduct covering organizational conflicts of interest. SUBRECIPIENT shall be alert to organizational conflicts of interest or non-competitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. Contractors that develop or draft specifications, requirements, statements of work, and/or Requests for Proposals ("RFP") for a proposed procurement must be excluded by SUBRECIPIENT from bidding or submitting a proposal to compete for the award of such procurement. Any request for exemption must be submitted in writing to COUNTY.
- d. SUBRECIPIENT agrees that, to the extent, they use contractors or subcontractors, such recipients shall use small, minority, women-owned or disadvantaged business concerns and contractors or subcontractors to the extent practicable.

13. General Agreement Provisions.

- a. **Non-appropriation Clause.** If payment for activities and programs under this Agreement extends into COUNTY's next fiscal year, COUNTY's obligation to pay for such work is subject to approval of future appropriations to fund the Agreement by the Board of County Commissioners.
- b. **Indemnification.** SUBRECIPIENT agrees to indemnify and hold COUNTY and its elected officials, officers, employees, and agents harmless with respect to any claim, cause, damage, action, penalty or other cost (including attorney's and expert fees) arising from or related to (1) SUBRECIPIENT's negligent or willful acts or those of its employees, agents or those under SUBRECIPIENT's control; or (2) SUBRECIPIENT'S performance under this Agreement including, but not limited to, any claim by a State or Federal funding source that SUBRECIPIENT used funds for an ineligible purpose. SUBRECIPIENT is responsible for the actions of its own agents and employees, and COUNTY assumes no liability or responsibility with respect to SUBRECIPIENT's actions, employees, agents or otherwise with respect to those under its control.
- c. **Insurance.** During the term of this Agreement, SUBRECIPIENT shall maintain in force, at its own expense, each insurance noted below:

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- 1) **Commercial General Liability.** SUBRECIPIENT shall obtain, at SUBRECIPIENT's expense, and keep in effect during the term of this Agreement, Commercial General Liability Insurance covering bodily injury 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, elected officials, 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.** If the Agreement involves the use of vehicles, SUBRECIPIENT shall obtain at SUBRECIPIENT expense, and keep in effect during the term of this Agreement, Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The combined single limit per occurrence shall not be less than \$1,000,000, or SUBRECIPIENT shall obtain at SUBRECIPIENT expense, and keep in effect during the term of the agreement, Personal auto coverage. The limits shall be no less than \$250,000/occurrence, \$500,000/aggregate, and \$100,000 property damage.
- 3) **Professional Liability.** If the Agreement involves the provision of professional services, SUBRECIPIENT shall obtain and furnish COUNTY evidence of Professional Liability Insurance in the amount of not less than \$1,000,000 combined single limit per occurrence/\$2,000,000 general annual aggregate for malpractice or errors and omissions coverage for the protection of COUNTY, its officers, elected officials 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 SUBRECIPIENT is a subject employer, as defined in ORS 656.023, SUBRECIPIENT 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, elected officials, officers, and employees" as an additional insured.
- 6) **Notice of Cancellation.** There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 60 days written notice to COUNTY. Any failure to comply with this provision will not affect the insurance coverage provided to COUNTY. The 60 days-notice of cancellation provision shall be physically endorsed on to the policy.
- 7) **Insurance Carrier Rating.** Coverage provided by SUBRECIPIENT must be underwritten by an insurance company deemed acceptable by COUNTY. Insurance coverage shall be provided by companies admitted to do business in Oregon or, in the alternative, rated A- or better by Best's Insurance Rating. COUNTY reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.

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- 8) **Certificates of Insurance.** As evidence of the insurance coverage required by this Agreement, SUBRECIPIENT shall furnish a Certificate of Insurance to COUNTY. COUNTY and its elected officials, employees and officers must be named as an additional insured on the Certificate of Insurance. No Agreement shall be in effect until the required certificates have been received, approved, and accepted by COUNTY. A renewal certificate will be sent to COUNTY 10 days prior to coverage expiration.
- 9) **Primary Coverage Clarification.** SUBRECIPIENT coverage will be primary in the event of a loss and will not seek contribution from any insurance or self-insurance maintained by, or provided to, the additional insureds listed above.
- 10) **Cross-Liability Clause.** A cross-liability clause or separation of insured's condition will be included in all general liability, professional liability, and errors and omissions policies required by the Agreement.
- 11) **Waiver of Subrogation.** SUBRECIPIENT agrees to waive their rights of subrogation arising from the work performed under this Agreement.
- 12) **Assignment.** This Agreement may not be assigned in whole or in part without the prior express written approval of COUNTY.
- 13) **Independent Status.** SUBRECIPIENT is independent of COUNTY and will be responsible for any federal, state, or local taxes and fees applicable to payments hereunder. SUBRECIPIENT is not an agent of COUNTY and undertakes this work independent from the control and direction of COUNTY excepting as set forth herein. SUBRECIPIENT shall not seek or have the power to bind COUNTY in any transaction or activity.
- 14) **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.
- 15) **Governing Law.** This Agreement is made in the State of Oregon, and shall be governed by and construed in accordance with the laws of that state without giving effect to the conflict of law provisions thereof. Any litigation between COUNTY and SUBRECIPIENT arising under this Agreement or out of work performed under this Agreement shall occur, if in the state courts, in the Clackamas County court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the State of Oregon.
- 16) **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.
- 17) **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.
- 18) **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.

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19) **Binding Effect.** This Agreement shall be binding on all parties hereto, their heirs, administrators, executors, successors and assigns.

20) **Integration.** This Agreement contains the entire Agreement between COUNTY and SUBRECIPIENT and supersedes all prior written or oral discussions or Agreements.

This Agreement consists of twelve (12) sections plus the following exhibits, which by this reference are incorporated herein.

- **Exhibit A:** SUBRECIPIENT Statement of Program Objectives
- **Exhibit B:** SUBRECIPIENT Program Budget
- **Exhibit C:** Congressional Lobbying Certificate
- **Exhibit D:** Required Financial Reporting
- **Exhibit D.1** SUBRECIPIENT Reimbursement Request
- **Exhibit E:** Quarterly Performance Reports and State of Oregon HIV Prevention Program Work Plan for FY2021
- **Exhibit F:** Final Financial Report
- **Exhibit G:** Residual Supplies Inventory
- **Exhibit H:** Business Associate Agreement

Signature page follows

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

CLACKAMAS COUNTY

CASCADE AIDS PROJECT

Commissioner: Tootie Smith, Chair
Commissioner: Sonya Fischer
Commissioner: Paul Savas
Commissioner: Martha Schrader
Commissioner: Mark Shull

Signing on Behalf of the Board,

By: _____
Tootie Smith, Chair
Board of County Commissioners

By: Tyler TerMeer _____
Tyler TerMeer, Executive Director
CEO

Dated: _____

Dated 06-29-2021 | 12:36 PM PDT

Approved to Form

By: Andrew Naylor
County Counsel

Dated: June 28, 2021

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EXHIBIT A

Activity A: HIV Testing			
Contractor: Cascade AIDS Project			
Objective 1: Increase the number of POF (Population of Focus): MSM, PWID, and populations with serodiscordant sexual activity receiving HIV testing			
Baseline: 25% of the population of focus were tested for HIV in FY21	Current Year Target: At least 40% of the population of focus will be tested for HIV in FY22		
Objective 2: Reestablish regular HIV testing in Clackamas County during FY22			
Baseline: In 2021 a total number of 98 HIV test were conducted	Current Year Target: At least 60 HIV tests will be conducted		
Key activities	Lead(s) & Key Partners	Timeline	Comments:
Resume in person HIV testing in Clackamas county. Rapid HIV testing will be offered at no less than 5 unique sites.	Anna Saeger, Prevention Navigator- Matthew Lucas Manager of Prevtion Services	11/1/2022	
Conduct HIV and Safer Sex education outreach via geo-social app (Grindr, Growlr, Scruff). At least 15 paid push messages (i.e. SHOUTS! on Growlr) will be sent to 2500 individual consumers of the sites listed.	Anna Saeger, Prevention Navigator	6/30/2022	
Provide at least 25 HIV home testing kits by mail to Clackamas county residents	Anna Saeger, Prevention Navigator	6/30/2022	MTL and Oraquick testing technology
Weekly HIV Counseling Rapid Testing and Confirmatory Testing performed two hours per week for a total of at least 40 hours of routine HIV testing.	Anna Saeger, Prevention Navigator	6/30/2022	

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Activity B: Linkage to HIV Care			
Contractor: Cascade AIDS Project			
Objective 1: All newly diagnosed HIV-positive persons identified through CAP’s Clackamas County HIV testing activities will be supported by CAP staff in order to access HIV medical care and other supportive services, including scheduling their first medical appointment, etc.			
Baseline: In FY21 100% of all newly diagnosed will receive linkage to care services within 30 days	Current Year Target: In FY22 100% of all newly diagnosed will receive linkage to care services within 30days		
Key Activities	Lead(s) & Key Partners	Timeline	Comments:
The prevention Navigator will consult with the CareLink Team about navigation and client services.	Anna Saeger, Prevention Navigator	6/30/2022	
Meet with the Manager of Clinical Services to discuss any changes or updates to the Prelim Positive protocol.	Anna Saeger, Prevention Navigator	11/30/2022	
Report all newly diagnosed HIV cases to DIS for client interview and linkage to care	Anna Saeger, Prevention Navigator	6/30/2022	

Activity C: PrEP/nPEP			
Contractor: Cascade AIDS Project			
Objective 1: At least 80% of HRN individuals tested through CAP’s Clackamas County activities will receive PrEP or other prevention referral/ service			
Baseline: In FY21 74% of HRN received PrEP or other prevention referral/ service	Current Year Target: At least 80% of HRN individuals will receive PrEP or other referral /services		
Key Activities	Lead(s) & Key Partners	Timeline	Comments:
PrEP and PEP is promoted through posters, handouts and geosocial app outreach at 100% of testing and outreach events	Anna Saeger, Prevention navigator	6/30/2022	

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PrEP and/or nPEP referrals are provided to at least 50 Clackamas county residents	Anna Saeger, Prevention navigator	6/30/2022	
The Manager of Prevention Services will conduct a data analysis quarterly of PrEP and PEP referrals in Clackamas County. Included in the data will be # of PrEP and PEP referrals, # of Clack Co residents who started PrEP, adherence to PrEP rate after 90 days and the number of Clackamas County residents getting care at CAP's other sites (PIVOT, PRISM)	Matthew Lucas, Manager of Prevention Services	Quarterly	
Objective 2: 75% of HRN testing in Clackamas County will receive an STD or HCV testing service (or referral when STD or HCV testing cannot be provided)			
Baseline: In FY21 93% of HRN received an STD or HCV service or referral	Current Year Target: In FY22, 98% of HRN will receive an STD or HCV service or referral		
Key Activities	Lead(s) & Key Partners	Timeline	Comments:
Offer an STD and or HCV test or referral when conducting HIV testing	Anna Saeger, Prevention Navigator	6/30/2022	
Create a one pager that has current STD/HCV testing options in Clackamas County	Anna Saeger, Prevention Navigator	6/30/2022	

Activity D: Community-level HIV Prevention			
Contractor: Cascade AIDS Project			
D1: Condom and lubricant distribution			
Objective 1: Distribute at least 4,000 safer sex materials (condoms and lubricant) to at least 4 different sites in Clackamas County			
Baseline: In FY21 about 14,000 safer sex materials (condoms and lubricant) were distributed at 8 sites	Current Year Target: At least 4,000 safer sex materials (condoms and lubricant) will be distributed in F22		
Key Activities	Lead(s) & Key Partners	Timeline	Comments:
Meet with CCPH at least quarterly to discuss needs in the community and plan to meet identified needs	Anna Saeger, Prevention Navigator	Quarterly	

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Regularly follow-up and check in with existing community partners to assess need for safer sex materials; establish mechanism for meeting needs identified	Anna Saeger, Prevention Navigator	6/30/2022	Ex: Clackamas Service Center, Clackamas Outreach Connections, Love One, Fort Kennedy, Founders Clinic, Rahab Sisters, The Living Room, Youth E.R.A
Ensure that a safer sex packet (condoms, lubricant, "how-to" guide) is mailed along with every HIV testing kit to each participant	Anna Saeger, Prevention Navigator	6/30/2022	
D2: Social media & marketing			
Objective 1: Reach more people in FY21 than in FY20 through expanded social media and marketing efforts			
Baseline: In FY 20 we reached about 26,000 using the following metrics: engagement, people reached, HIV tests, total reach, total impressions	Current Year Target: In FY21, increase by 10% the number of people reached through social media and marketing using the following metrics: engagement, people reached, HIV tests, total reach, and total impressions		
Key Activities:	Lead(s) & Key Partners	Timeline	Comments:
Weekly updates to CAP's Community Testing Facebook page	Anna Saeger, Prevention Navigator	6/30/2022	
Daily app outreach including logging on and push messages	Anna Saeger, Prevention Navigator	6/30/2022	
Weekly push messages via geo social apps reporting testing sites. i.e. Sunnyside, outreach events	Anna Saeger, Prevention Navigator	6/30/2022	
D3: Community Mobilization			
Objective 1: Improve communication between CAP and CCPH to inform strategies for community mobilization			

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Baseline: During FY21 recurring meetings with CCPH and CAP were not scheduled with the entire team	Current Year Target: To increase communication and planning strategies with CCPH by scheduling recurring meetings		Final Target:
Key Activities:	Lead(s) & Key Partners	Timeline	Comments:
Schedule a recurring meeting with CCPH to review progress on contract objectives, outreach strategies, discuss needs in the county.	Anna Saeger, Prevention Navigator-Matthew Lucas, Manager of Prevention Services	Quarterly	

D4: Engagement with Communities of Color			
Objective 1: Increase percentage of HIV tests provided to Communities of Color (race and/or ethnicity other than White) in Clackamas County			
Baseline: Testing outcomes in FY21 - 32% identified with a race and/or ethnicity other than White • 22% tested identify as Hispanic/Latino • 6.4% tested identify as Black/African American	Current Year Target: Increase HIV testing among Communities of Color overall by 5% compared to FY22		
Key Activities:	Lead(s) & Key Partners	Timeline	Comments:
Partner with culturally specific agencies to offer and conduct testing and prevention education	Anna Saeger, Prevention Navigator-Matthew Lucas, Manager of Prevention Services	6/30/2022	
Meet with CAP staff who hold culturally specific job titles to inquire about wants in the community they support	Anna Saeger, Prevention Navigator-Matthew Lucas, Manager of Prevention Services	6/30/2022	
Continue testing and outreach activities that support diverse communities	Anna Saeger, Prevention Navigator	6/30/2022	i.e. The Sunnyside Clinic, Youth ERA, & Clackamas Community College

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EXHIBIT B: SUBRECIPIENT PROGRAM BUDGET

HIV Prevention - FY22 Subcontractor Line Item Budget Complete <u>all</u> yellow shaded areas and cell values colored <u>blue</u> . For assistance, contact: Barbara Keepes, 971-673-0573, barbara.j.keepes@state.or.us								Contract Amount: \$75,000		
County: Clackamas										
Subcontractor: Cascade Aids Project (CAP)										
Completed by: (include contact information): Matthew Lucas										
Date Completed: 3/17/2021										
IMPORTANT: 1. This form must be completed by staff responsible for program budgets and fiscal monitoring. 2. If your agency is subcontracting for services, a separate line item budget is required for each subcontractor.										
Budget Categories		Description						(A) Services / Costs Sub-Total	Federal Portion CFDA #93.940	State Portion
A) Personnel		Name & Title	Annual Salary & Fringe (Direct Services)	FTE based on 2080 hr work year	Rate / hr	Hrs / mo	# of mo. budgeted	Total	Total	Total
<i>Example</i>		<i>Jane Doe, R.N.</i>	<i>\$38,750.00</i>	<i>0.50</i>	<i>#DIV/0!</i>	<i>0.00</i>	<i>12</i>	<i>#DIV/0!</i>	<i>#DIV/0!</i>	<i>#DIV/0!</i>
1		M. Lucas - Manager of Prevention Services	\$63,550.00	0.05	\$30.55	8.67	12	\$3,178	\$3,178	\$0
2		E. Mendez - Manager of Clinical Health Services	\$63,550.00	0.10	\$30.55	17.33	12	\$6,355	\$6,355	\$0
3		T. Casey - Prevention Services Coordinator	\$45,147.00	0.05	\$21.71	8.67	12	\$2,257	\$2,257	\$0
4		A. Saeger - Prevention Navigator	\$45,147.00	0.64	\$21.71	110.93	12	\$28,894	\$28,894	\$0
		Total	\$217,394.00	0.84	\$104.52	145.60		\$40,684	\$40,684	\$0
B) Fringe Benefits		Personnel Costs	Fringe Benefit Rate %					Total:	Total:	Total:
		\$40,683.93	30%					\$12,205	\$12,205	\$0

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C) Travel	Item	Include calculations for lodging, per diem, mileage, location of travel, number of people traveling and purpose of travel. Mileage rate may not exceed \$0.56 / mile. Do not budget mileage on county owned cars.			
		Detail			
	1	Program Mileage for Clackamas County HIV Prevention activities including HIV testing and condoms distribution at IRS rate of \$.575/mile. Costs based on previous year's expenditures and estimated total miles driven for HIV prevention contract specific activities for one program year (662 miles x \$.575/mile).	\$300	\$0	\$300
	2	Program Parking for Clackamas County HIV Prevention activities including HIV testing and condoms distribution at agency rate of \$16/day. Costs based on previous year's expenditures and estimated total days driven for one program year. (\$16 per day x 73 days)	\$592	\$0	\$592
	3		\$0	\$0	\$0
	Total		\$892	\$0	\$892
D) Equipment	Item	Equipment is defined as costing \$5000 or greater and having a useful life of at least one year. Equipment purchases must be preapproved.			
		Detail			
	1		\$0	\$0	\$0
	3		\$0	\$0	\$0
	Total		\$0	\$0	\$0
E) Supplies	Item	List supply detail including office & medical supplies. If using an allocation method, detail how costs are allocated, (i.e. FTE, sq footage, etc). For supplies, list item, quantity and cost. Preprinted, purchased materials are considered a supply item, direct printing costs of materials, is to be listed in section G, Other. The purchase of furniture is not allowed in this award.			
		List item and cost			
	1	Clinical Supplies - For HIV Testing including: gauze, phlebotomy supplies, bandages, lancets, disposable test pads, surface sanitation wipes, etc. Phlebotomy supplies are for confirmatory HIV testing.	\$351	\$0	\$351
	2	Safer Sex Supplies - Specialty condoms, insertive condoms, safer sex kits, and lube for distribution in Clackamas County	\$694	\$0	\$694
	3	HIV Test Kits - Total cost for 125 Alere Determine Combo (\$10 per test) & 50 Inti One Minute tests (\$15 per test). Tests are budgeted over the forecasted amount tests performed to account for running controls, invalid tests, and practice tests.	\$2,000	\$0	\$2,000
	4	Central Supplies - General office supplies (e.g. pens, paper, note pads, etc.) based on FTE for program (\$175.13 x .8875 FTE)	\$155	\$0	\$155
	5		\$0	\$0	
	Total		\$3,200	\$0	\$3,200

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F) Consultants	List all consultant costs and area in which consultative services are to be provided				
	Summarize cost for each consultant				
	1		\$0	\$0	\$0
	2		\$0	\$0	\$0
	Total		\$0	\$0	\$0
G) Other	Item	Detail			
		List costs for staff training or trainings that the LPHA will be providing, marketing / advertising costs for all replication and distribution of materials, telephone, and other direct costs not already indicated. Printing costs, postage and office equipment rental. Note: food and beverages are only allowable when used as an incentive or as an integral part of an intervention. Incentives must be detailed, including individual costs, purpose of the incentive, and how incentive is to be used and tracked. For negotiable incentives, e.g., gift cards, a copy of cash handling procedures must be submitted with any request for incentive use. Any costs that are allocated costs must include allocation method.			
	1	Staff Training - Agency trainings calculated at actual FTE (\$221.83 x .8875 FTE) plus \$500 x .80 FTE for Phlebotomy training & certification. Agency trainings include HIV Prevention Specific Trainings, Trauma Informed Care, Motivational Interviewing, etc.	\$597	\$0	\$597
	2	Phone & Internet - Basic telephone & internet service for agency allocated at .8875 FTE (plus cell phone reimbursement for .8875 FTE \$35 x 12 mos X .8875 FTE)	\$812	\$0	\$812
	3	Copies & In House Printing - Agency copier lease & in-house printing charges FTE based (\$142 x .8875 FTE) for general staff documents as well as testing forms, flyers, prevention messaging (e.g. PrEP, HIV 101), etc. Costs are shared across programs.	\$126	\$0	\$126
	4	Printing - Expenses for Clackamas County HIV Prevention print materials that require external printing. Covers the printing cost of HIV result tent cards, palm cards, and other materials intended to promote HIV testing site information and prevention messages, including PrEP, particularly among MSM and other HRN. Total costs are based on previous year's expenditures and cost per item to print.	\$358	\$0	\$358
	5	Advertising for HIV Testing Recruitment & HIV Prevention Messaging - Total program promotion costs for Clackamas County HIV Prevention activities allocated towards percentage of budget. This includes things such as social media promotion, geo-social networking app direct messaging, banner advertisements, etc. Emphasis on promotion of HIV testing sites and PrEP navigation services among MSM and other HRN. Total costs are based on historical cost of targeted social marketing and program promotion and are pulled from last year's expenditures.	\$349	\$0	\$349
	6	Volunteer Resources - Costs include: Volunteer Coordinator, volunteer database costs, volunteer staff training, volunteer recruitment, background investigation of all potential new volunteers, volunteer training, and printing of volunteer materials. The expenses of operating CAP's volunteer support are allocated using a calculation of the prior fiscal year's actual volunteer hours spent on this program's activities compared to total volunteer hours. Specific programs are charged accordingly to their actual use of volunteers.	\$342	\$0	\$342
	7	Targeted HIV Testing Incentives - Targeted testing incentives used for HIV testing promotion and recruitment through raffles at HIV testing events targeting high-risk HIV negative MSM, particularly MSM of color. Testing incentives details: 3 cases of ONE condom Pride safer sex kits (with 12 safer sex kits per case of condoms, lube, stickers, Pride beads, and vibrator) at \$60 each (3 cases x \$60 = 36 kits); Nike sports bag (\$90 value, provided through in-kind donation). Types of targeted testing incentives were selected by members of the target populations.	\$424	\$0	\$424
	Total		\$3,008	\$0	\$3,008

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H) Contractual	Item	List all subcontracts, submit a separate line item budget for each contractor			
		Subcontracted Agency			
	1		\$0	\$0	\$0
	2		\$0	\$0	\$0
	3		\$0	\$0	\$0
	Total		\$0	\$0	\$0
I) Total Direct Costs					
		Sum of A - H			
		Total	\$59,989	\$52,889	\$7,100
J) Other					
	1	Davis Office Rent - Office space and utilities for direct services staff based on .8875 FTE	\$6,264	\$0	\$6,264
	2	Belmont Office Rent (Pivot) - Office space & utilities for all clinical supplies for HIV testing in Clackamas County, all safer sex material storage for Clackamas County, Pivot HIV/STI testing services that are provided to Clackamas County residents at Pivot location, and all testing file storage. Clackamas County residents accounted for 6.8% of Pivot clients in FY19. FY21 Pivot rent calculated as 6.77% of total cost of Pivot site rent = \$4747.46. Total rent is \$2,747.26 after \$2,000 reduction due to IN KIND donation by CAP for Washington County efforts. This \$6,000 is not covered by any other contracts.	\$2,747	\$0	\$2,747
	Total		\$9,011	\$0	\$9,011
K) Indirect Costs					
	Item	8.7% of total costs. Non-federally funded.	\$5,999	\$0	\$5,999
	Total		\$5,999	\$0	\$5,999
K					
Total Direct Program Expenses - must match contract amount - sum of I, J & K			\$75,000	\$52,889	\$22,110

**EXHIBIT C
CONGRESSIONAL LOBBYING CERTIFICATE**

The undersigned certifies, to the best of his or her knowledge and belief, that:

No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, 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 awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

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 undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions[as amended by "Government-wide Guidance for New Restrictions on Lobbying," 61 Federal Regulations 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq.)].

The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code (as amended by the Lobbying Disclosure Act of 1995). 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.

[Note: Pursuant to 31 U.S.C. §1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each expenditure or failure.]

The Authorized Representative certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Organization understands and agrees that the provisions of 31 U.S.C. §3801, et seq., apply to this certification and disclosure, if any.

Cascade AIDS Project (CAP)	22-014 HIV Testing
Organization Name	Award Number or Project Name
<i>Tyler TerMeer</i>	06-29-2021 12:36 PM PDT
Signature	Date
Tyler TerMeer, Executive Director - CEO	
Name and Title of Authorized Representative	

EXHIBIT D
REQUIRED FINANCIAL REPORTING AND REIMBURSEMENT REQUEST

PROJECT NAME: HIV Testing and Counseling	AGREEMENT #22-014 Contract #10127
SUB-RECIPIENT: CASCADE AIDS PROJECT (CAP)	

COMPENSATION AND RECORDS

- A. COUNTY shall compensate SUBRECIPIENT for satisfactorily completing activities described in EXHIBIT A, above.
- B. Total payments to SUBRECIPIENT shall not exceed **\$75,244**.
- C. COUNTY agrees to pay SUBRECIPIENT true and verifiable expenses on a monthly basis after payment is received from the State of Oregon.
- D. Method of Payment: To receive payment, SUBRECIPIENT shall submit Request for Reimbursement Form monthly for true and verifiable expenses as outlined below:

SUBRECIPIENT shall submit Request for Reimbursement Form monthly for true and verifiable expenses by the tenth day of the month following that in which service was performed. Requests shall be submitted to Clackamas County Public Health (“CCPHD”), Attn: Sherry Olson 2051 Kaen Road, Suite 367, Oregon City, Oregon 97045, or electronically to: SOlson4@co.clackamas.or.us. When submitting electronically, designate SUBRECIPIENT name and contract **Agreement # 22-014 Contract #10127** in the subject of the e-mail.

Within thirty (30) days after receipt of the bill, provided that the Program Supervisor has approved the service specified on the invoice, COUNTY shall pay the amount requested to SUBRECIPIENT.

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

SUBRECIPIENT shall complete the State of Oregon HIV Prevention Program Work Plan for FY2021 (Exhibit E) **quarterly**. CCPHD will complete their section of the Work Plan and send the Work Plan electronically via E-mail to SUBRECIPIENT by the tenth day of the month. SUBRECIPIENT will complete its sections and return to CCPHD by the 20th of the month. **Completed Work Plan due to Oregon Health Authority (“OHA”) 30 DAYS AFTER QUARTER END.**

Reporting Periods:

07/01/2021 - 09/30/2021, 10/01/2021 - 12/31/2021, 01/01/2022 - 03/31/2022, 04/01/2022 – 06/30/2022

- E. Record and Fiscal Control System: All payroll and financial records pertaining in whole or in part to this contract shall be clearly identified and readily accessible. Such records and documents should be retained for a period of seven (7) years after receipt of final payment under this contract; provided that any records and documents that are the subject of audit findings shall be retained for a longer time until such audit findings are resolved.
- F. Access to Records: COUNTY, the State of Oregon, the Federal Government, and their duly authorized representatives shall have access to the books, documents, papers, and records of SUBRECIPIENT, which are directly pertinent to the contract for making audit, examination, excerpts, and transcripts.

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

(Sample of Request for reimbursement form on next page)

**EXHIBIT D1: SUBRECIPIENT REQUEST FOR
 REIMBURSEMENT CLACKAMAS COUNTY PUBLIC HEALTH
 DIVISION**

Organization:			CLAIM PERIOD:	Note: This form derives from the approved budget in your grant Agreement. All expenditures must have adequate supporting documentation.
Service:				
Program Contact:				
Agreement Term: 7/01/21 through 6/30/22				
Agreement Number: 22-014				

Category	Approved Grant Amount	Monthly Grant Expenditure	Total Monthly Expenditure	YTD Grant Expenditure	Balance
Personnel (List salary, FTE & Fringe costs for each position)					
[Funded Position Name - Salary]	\$ -	\$ -	\$ -	\$ -	\$ -
[Funded Position Name - Fringe]	\$ -	\$ -	\$ -	\$ -	\$ -
Total Personnel Services	\$ -	\$ -	\$ -	\$ -	\$ -
Supplies					
Phone, computer	\$ -	\$ -	\$ -	\$ -	\$ -
Travel					
Mileage (.54/milex200 miles)	\$ -	\$ -	\$ -	\$ -	\$ -
Additional (please specify)					
Client assistance (bus tickets, etc.)	\$ -	\$ -	\$ -	\$ -	\$ -
Total Programmatic Costs	\$ -	\$ -	\$ -	\$ -	\$ -
Indirect Rate (X%)	\$ -	\$ -	\$ -	\$ -	\$ -
Total Grant Costs	\$ -	\$ -	\$ -	\$ -	\$ -

Clackamas County and the Federal government retain the right to inspect all financial records and other books, documents, papers, plans, records of shipments and payments and writings of Recipient that are pertinent to this Agreement.

CERTIFICATION

By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812).

Prepared by:				
Authorized SUBRECIPIENT Official:				
Date:				
Department Review.				
Project Officer Name:				
Department:				
Signature:				
Department: forward to Grant Accountant for review and processing				Grant Accountant Initial/Date:

EXHIBIT E
MONTHLY AND FINAL PERFORMANCE REPORT

<i>PROJECT NAME: HIV Testing and Counseling</i>	<i>AGREEMENT # 22-014 Contract #10127</i>
<i>SUBRECIPIENT: CASCADE AIDS PROJECT (CAP)</i>	

OHA will send the HIV Prevention Program Work Plan to SUBRECIPIENT and CCPHD. SUBRECIPIENT will complete the Work Plan and send to CCPHD 10 days prior to the OHA due date (30 DAY AFTER QUARTER END)

Reporting Periods:

07/01/2021- 09/30/2021, 10/01/2021- 12/31/2021, 01/01/2022 - 03/31/2022, 04/01/2022 – 06/30/2022

**CLACKAMAS COUNTY AND CASCADE AIDS PROJECT (CAP)
 SUBRECIPIENT AGREEMENT EXHIBIT F: FINAL FINANCIAL REPORT**

Project Name: HIV Testing and Counseling	Agreement #: 22-014
Federal Award #:	Date of Submission: XX/XX/XX
Subrecipient: CASCADE AIDS PROJECT (CAP)	
Has Subrecipient submitted all requests for reimbursement? Y/N	
Has Subrecipient met all programmatic closeout requirements? Y/N	

Final Financial Report

Report of Funds received, expended, and reported as match (if applicable) under this agreement

Total Federal Funds authorized on this agreement:	\$45,000
Year-to-Date Federal Funds requested for reimbursement on this agreement:	
Total Federal Funds received on this agreement:	
Balance of unexpended Federal Funds (Line 1 minus Line 3):	

By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812).

Subrecipient's Certifying Official (printed): _____

Subrecipient's Certifying Official (signature): _____

Subrecipient's Certifying Official's title: _____

CLACKAMAS COUNTY AND CASCADE AIDS PROJECT (CAP) SUBRECIPIENT GRANT AGREEMENT EXHIBIT G: RESIDUAL SUPPLIES INVENTORY

Project Name: HIV TESTING AND COUNSELING	Agreement #: 22-014
Federal Award: #	Date of Submission: XX/XX/XX
Subrecipient: CASCADE AIDS PROJECT (CAP)	
Is this program continuing beyond the expiration of this agreement?: Y/N	
If yes, does the subrecipient request to continue to use all or part of the supplies? Y/N (If yes, identify all such supplies below by marking it with a highlighter)	
OR	
Does the subrecipient request the use of the supplies on other federally supported activities? Y/N	
If subrecipient does not request continued use of items of equipment, the federal agency will issue disposition instructions. Other agency-specific requirements may apply.	

Residual Supplies Inventory
Items of Supplies with an Aggregate, Current Fair Market Value of \$5,000 or more and purchased with Federal Grant Funds

Attach more sheets if necessary

Items Description	Location	Estimated Current Fair Market Value	Disposition Date & Price, if applicable

Subrecipient's Certifying Official (printed): _____

Subrecipient's Certifying Official (signature): _____

Subrecipient's Certifying Official's title: _____

Subrecipient's Certifying Official's telephone: _____

EXHIBIT H BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement is entered into as of July 1, 2021 (“Effective Date”) by and between Clackamas County Health, Housing and Human Services, Public Health Division (“Covered Entity”) and Cascade AIDS Project (“CAP”) (“Business Associate”) in conformance with the Health Insurance Portability and Accountability Act of 1996, and its regulations (“HIPAA”).

RECITALS

Whereas, the Covered Entity has engaged the services of the Business Associate, as defined under 45 CFR §160.103, for or on behalf of the Covered Entity;
Whereas, the Covered Entity may wish to disclose Individually Identifiable Health Information to the Business Associate in the performance of services for or on behalf of the Covered Entity as described in a Services Agreement (“Agreement”);
Whereas, such information may be Protected Health Information (“PHI”) as defined by the HIPAA Rules promulgated in accordance with the Administrative Simplification provisions of HIPAA;
Whereas, the Parties agree to establish safeguards for the protection of such information;
Whereas, the Covered Entity and Business Associate desire to enter into this Business Associate Agreement to address certain requirements under the HIPAA Rules;
Now, therefore, the parties hereby agree as follows:

SECTION I – DEFINITIONS

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

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

SECTION II – OBLIGATIONS AND ACTIVITIES OF THE BUSINESS ASSOCIATE

The Business Associate agrees to the following:

- 2.1 Not to use or further disclose PHI other than as permitted or required by this Business Associate Agreement or as Required by Law;
- 2.2 To use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to Electronic PHI, to prevent use or disclosure of PHI other than as provided for by this Business Associate Agreement;
- 2.3 To mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a use or disclosure of PHI by the Business Associate in violation of the requirements of this Business Associate Agreement;
- 2.4 To immediately report to the Covered Entity any use or disclosure of PHI not provided for by this Business Associate Agreement of which it becomes aware, including any Security Incident of which it becomes aware;
- 2.5 In accordance with 45 CFR §§164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any agent, including a subcontractor, that creates, receives, maintains, or transmits PHI on behalf of the Business Associate agrees in writing to the same restrictions, conditions and requirements that apply to the Business Associate with respect to such PHI;
- 2.6 To provide access, at the request of the Covered Entity, and in the time and manner designated by the Covered Entity, to PHI in a Designated Record Set, to the Covered Entity or, as directed by the Covered Entity, to the Individual or the Individual’s designee as necessary to meet the Covered Entity’s obligations under 45 CFR §164.524; provided, however, that this Section 2.6 is applicable only to the extent the Designated Record Set is maintained by the Business Associate for the Covered Entity;
- 2.7 To make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR §164.526 at the request of the Covered Entity or an Individual, and in the time and manner designated by the Covered Entity; provided, however, that this Section 2.7 is applicable only to the extent the Designated Record Set is maintained by the Business Associate for the Covered Entity;
- 2.8 To make internal practices, books and records, including policies and procedures on PHI, relating to the use and disclosure of PHI received from, or created or received by the Business Associate

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

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

- 3.1 Business Associate agrees to make uses, disclosures, and requests for PHI consistent with the Covered Entity's minimum necessary policies and procedures.
- 3.2 Except as otherwise limited in this Business Associate Agreement, the Business Associate may use or disclose PHI to perform functions, activities or services for, or on behalf of, the Covered Entity as specified in the Services Agreement, provided that such use or disclosure would not violate the HIPAA Rules if done by the Covered Entity; and,
- 3.3 Except as otherwise limited in this Business Associate Agreement, the Business Associate may:
- a. **Use for management and administration.** Use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate; and,
 - b. **Disclose for management and administration.** Disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the

Business Associate, provided that disclosures are Required by Law, or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as Required by Law or for the purposes for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

SECTION IV – NOTICE OF PRIVACY PRACTICES

4.1 If requested, the Covered Entity shall provide the Business Associate with the notice of privacy practices that the Covered Entity produces in accordance with 45 CFR §164.520, as well as any changes to such notice. Covered Entity shall (a) provide the Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect the Business Associate's permitted or required uses and disclosures; (b) notify the Business Associate of any restriction to the use or disclosure of PHI that the Covered Entity has agreed to in accordance with 45 CFR §164.522, to the extent that such restrictions may affect the Business Associate's use or disclosure of PHI; and (c) not request the Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Standards if done by the Covered Entity, except as set forth in Section 3.2 above.

SECTION V – BREACH NOTIFICATION REQUIREMENTS

5.1 With respect to any Breach, the Covered Entity shall notify each individual whose Unsecured PHI has been, or is reasonably believed by the Covered Entity to have been, accessed, acquired, used, or disclosed as a result of such Breach, except when law enforcement requires a delay pursuant to 45 CFR §164.412. This notice shall be:

- a. Without unreasonable delay and in no case later than 60 calendar days after discovery of a Breach.
- b. In plain language including and to the extent possible:
 - 1) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
 - 2) A description of the types of Unsecured PHI that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
 - 3) Any steps Individuals should take to protect themselves from potential harm resulting from the Breach;
 - 4) A brief description of what the Covered Entity and/or Business Associate is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against any further Breaches; and,
 - 5) Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, web site, or postal address.
- c. By a method of notification that meets the requirements of 45 CFR §164.404(d).
- d. Provided to the media when required under 45 CFR §164.406 and to the Secretary pursuant to 45 CFR §164.408.

5.2. Business Associate shall promptly provide any information requested by Covered Entity to provide the information described in Section 5.1.

SECTION VI – TERM AND TERMINATION

6.1 **Term.** The term of this Business Associate Agreement shall be effective as of the date set forth above in the first paragraph and shall terminate when all of the PHI created, maintained, transmitted

or received by the Business Associate on behalf of the Covered Entity, is destroyed or returned to the Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.

- 6.2 **Termination for Cause.** Upon the Covered Entity's knowledge of a material breach of this Business Associate Agreement by the Business Associate, the Covered Entity shall provide an opportunity for the Business Associate to cure the breach or end the violation. The Covered Entity shall terminate this Business Associate Agreement and the Services Agreement if the Business Associate does not cure the breach or end the violation within the time specified by the Covered Entity, or immediately terminate this Business Associate Agreement if cure is not reasonably possible.

If the Business Associate fails to cure a breach for which cure is reasonably possible, the Covered Entity may take action to cure the breach, including but not limited to obtaining an injunction that will prevent further improper use or disclosure of PHI. Should such action be taken, the Business Associate agrees to indemnify the Covered Entity for any costs, including court costs and attorneys' fees, associated with curing the breach.

Upon the Business Associate's knowledge of a material breach of this Business Associate Agreement by the Covered Entity, the Business Associate shall provide an opportunity for the Covered Entity to cure the breach or end the violation. The Business Associate shall terminate this Business Associate Agreement and the Services Agreement if the Covered Entity does not cure the breach or end the violation within the time specified by the Business Associate, or immediately terminate this Business Associate Agreement if the Covered Entity has breached a material term of this Business Associate Agreement if cure is not reasonably possible.

6.3 **Effect of Termination.**

- a. **Return or Destruction of PHI.** Except as provided in Section 6.3(b), upon termination of this Business Associate Agreement, for any reason, the Business Associate shall return, or if agreed to by the Covered Entity, destroy all PHI received from the Covered Entity, or created, maintained or received by the Business Associate on behalf of the Covered Entity and retain no copies. This provision shall apply to PHI that is in the possession of subcontractors or agents of the Business Associate.
- b. **Return or Destruction of PHI Infeasible.** In the event that the Business Associate determines that returning or destroying PHI is infeasible, the Business Associate shall provide to the Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction of the PHI is infeasible, the Business Associate shall extend the protections of this Business Associate Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as the Business Associate maintains such PHI. In addition, the Business Associate shall continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to Electronic PHI to prevent use or disclosure of the PHI, for as long as the Business Associate retains the PHI.

SECTION VII – GENERAL PROVISIONS

- 7.1 **Regulatory references.** A reference in this Business Associate Agreement to the HIPAA Rules or a section in the HIPAA Rules means that Rule or Section as in effect or as amended from time to time.
- 7.2 **Compliance with law.** In connection with its performance under this Business Associate Agreement, Business Associate shall comply with all applicable laws, including but not limited to laws protecting the privacy of personal information about Individuals.

- 7.3 **Amendment.** The Parties agree to take such action as is necessary to amend this Business Associate Agreement from time to time. All amendments must be in writing and signed by both Parties.
- 7.4 **Indemnification by Business Associate.** Business Associate agrees to indemnify, defend and hold harmless the Covered Entity and its commissioners, employees, directors, officers, subcontractors, agents or other members of its workforce, each of the foregoing hereinafter referred to as “Indemnified Party,” against all actual and direct losses suffered by the Indemnified Party and all liability to third parties arising from or in connection with Business Associate’s breach of Sections II and III of this Business Associate Agreement. Accordingly, on demand, Business Associate shall reimburse any Indemnified Party for any and all actual and direct losses, liabilities, fines, penalties, costs or expenses (including reasonable attorneys’ fees) which may for any reason be imposed upon any Indemnified Party by reason of any suit, claim, action, proceeding or demand by any third party which results for Business Associate’s breach hereunder. The obligation to indemnify any Indemnified Party shall survive the expiration or termination of this Agreement for any reason.
- 7.5 **Survival.** The respective rights and obligations of Business Associate under Section II of this Business Associate Agreement shall survive the termination of the Services Agreement and this Business Associate Agreement.
- 7.6 **Interpretation.** Any ambiguity in this Business Associate Agreement shall be resolved to permit Covered Entity to comply with the HIPAA Rules.

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

Business Associate

Covered Entity

Cascade AIDS Project (CAP)

Clackamas County

By: *Tyler TenMeer* By: _____

Title: Executive Director CEO Title: Director, H3S

Date: 06-29-2021 | 12:36 PM PDT Date: _____

September 16, 2021

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Sub-recipient Professional Services Agreement with Outside In for Human Immunodeficiency Virus (HIV) Testing and Counseling Services

Purpose/Outcomes	Provide HIV testing, counseling, and outreach to Clackamas County population.
Dollar Amount and Fiscal Impact	The maximum Agreement value is \$22,184.
Funding Source	Funding provided by the State of Oregon - Oregon Health Authority. No County General Funds are involved.
Duration	Effective upon signature and terminates on June 30, 2022
Previous Board Action	No Previous Board Actions have been taken.
Strategic Plan Alignment	1. Improved Community Safety and Health 2. Ensure safe, healthy and secure communities
Counsel Review	County counsel has reviewed and approved this document on June 29, 2021 Counsel staff: AN
Contact Person	Rodney A. Cook, Interim Public Health Director – 503-650-5694
Contract No.	10131

BACKGROUND:

The Clackamas County Public Health Division (CCPHD) of the Health, Housing & Human Services Department requests the approval of a Sub-recipient Professional Services Agreement with Outside In for HIV Testing and Counseling Services. The County receives pass through funding through the Local Public Health Authority Agreement (LPHA) with the State of Oregon. This funding is a mix of federal and state funding. The County contracts with Outside In to manage the HIV program.

This Agreement has a maximum value of \$22,184. This Agreement is effective upon execution and continues through June 30, 2022.

RECOMMENDATION:

Staff recommends the Board of County Commissioners approve this Agreement.

Respectfully submitted,



For Rodney A. Cook
Rodney A. Cook, Interim Director
Health, Housing, and Human Services

**CLACKAMAS COUNTY, OREGON
SUBRECIPIENT GRANT AGREEMENT #22-013**

Project Name: **HIV Testing – Contract #10131**
Project Number: **40063**

This Agreement is between **Clackamas County (“COUNTY”)**, a political subdivision of the State of Oregon, acting by and through its Department of Health, Housing and Human Services, Clackamas County Public Health Division and **Outside In (“SUBRECIPIENT”)**, an Oregon Nonprofit Organization.

Clackamas County Data

Grant Accountant: Sherry Olson	Program Manager: Anna Summer
Clackamas County – Public Health Division 2051 Kaen Road, Suite 367 Oregon City, OR 97045 Phone: (503) 742-5342 Email: SOlson4@co.clackamas.or.us	Clackamas County – Public Health Division 2051 Kaen Road, Suite 367 Oregon City, OR 97045 Phone: (503) 742-5382 Email: ASummer@co.clackamas.or.us

Subrecipient Data

Finance/Fiscal Representative: Bonnie Ross	Program Representative: Haven Wheelock
Outside In, Inc. 1132 SW 13 th Ave Portland, OR 97205 Phone: 503-535-3803 Email: terryn@outsidein.org	Outside In 1132 SW 13 th Ave Portland, OR 97205 Phone: 503-535-3826 Email: havenw@outsidein.org
DUNS: 867947061	

RECITALS

1. COUNTY has an Intergovernmental Agreement (“IGA”) for the Financing of Public Health Services through its Public Health Division, the entity designated, pursuant to ORS 431.375(2), as the Local Public Health Authority for Clackamas County (“LPHA”) and the State of Oregon acting by and through its Oregon Health Authority (“OHA”) for the biennium period 2019-2021. SUBRECIPIENT desires to partner with COUNTY to fulfill the objectives of such IGA, which includes Program Element 07 for HIV Prevention Services. Funds provided under this Agreement for such Program Element may only be used in accordance with and subject to the requirements and limitations for the following services and appropriate costs associated with the delivery of such services (“Services”):
 - a. Confidential HIV counseling, rapid testing, and referral services;
 - b. Other HIV prevention services with evidence of effectiveness to identified high-risk populations in COUNTY’s service area; and
 - c. Structural activities that facilitate the delivery of HIV prevention services to high-risk populations in COUNTY’s service area.
2. Priority populations for service focus in Oregon are identified in the current Integrated HIV Prevention and Care Plan Guidance found at:

<https://hab.hrsa.gov/sites/default/files/hab/Global/hivpreventionplan062015.pdf> . Funds awarded under this Agreement may only be expended on Services included in COUNTY's HIV Prevention Program Model Plan that has been approved by the Department of Human Services ("DHS") HIV Prevention Program, with an emphasis focused predominantly on services for the high-risk populations identified above.

3. Project description: Expand HIV client-centered counseling, testing and referral services ("CTRS") and continue to provide outreach to CTRS to sexual and social networks of men who have sex with men ("MSM") and other priority populations who reside in Clackamas County.
4. This Grant Agreement of Federal financial assistance sets forth the terms and conditions pursuant to which SUBRECIPIENT agrees on delivery of the Program.

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

AGREEMENT

- 1) **Term and Effective Date.** This Agreement becomes effective on execution. Eligible expenses for this Agreement may be charged during the period beginning **July 1, 2021** and expiring **June 30, 2022** a total of twelve (12) months.
- 2) **Program.** The Program is described in Attached Exhibit A: Subrecipient Statement of Program Objectives. SUBRECIPIENT agrees to carry out the program in accordance with the terms and conditions of this Agreement.
- 3) **Standards of Performance.** SUBRECIPIENT shall perform all activities and programs in accordance with the requirements set forth in this Agreement and all applicable laws and regulations. Furthermore, SUBRECIPIENT shall comply with the requirements of the 2020-2021 State of Oregon Intergovernmental Agreement by and through the Oregon Health Authority for the Financing of Public Health Services and the U.S. Department of Health and Human Services, that is the source of the grant funding, in addition to compliance with requirements of Title 45 of the *Code of Federal Regulations*, Part 74. A copy of the applicable sections of the grant award has been provided to SUBRECIPIENT by COUNTY. A complete copy of the 2020-2021 State of Oregon Intergovernmental Agreement by and through the Oregon Health Authority will be provided upon request by SUBRECIPIENT. SUBRECIPIENT shall further comply with any requirements required by the State of Oregon, Department of Human Services, 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.** The maximum, not to exceed, amount COUNTY will pay is **\$22,184**. COUNTY's funding for this Agreement is the **2021-2023** Intergovernmental Agreement [#159803] with Oregon Health Authority to the **Local Public Health Authority (LPHA)** for, HIV Prevention Activities for Health Departments as follows:
 - Federal Pass through funds (**\$17,566**) [U.S. Department of Health and Human Services; **CFDA 93.940**]
 - Oregon Health Authority State funds (**\$4,619**)
- 5) **Amendments.** The terms of this Agreement shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by both parties.

SUBRECIPIENT must submit a written request including a justification for any amendment to 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 executed before SUBRECIPIENT performs work subject to the amendment.

- 6) **Termination.** This Agreement may be suspended or terminated prior to the expiration of its term by:
- a) Written notice provided by COUNTY resulting from material failure by SUBRECIPIENT to comply with any term of this Agreement, or;
 - b) Mutual agreement by COUNTY and SUBRECIPIENT.
 - c) Written notice provided by COUNTY that OHA has determined funds are no longer available for this purpose.
 - d) Written notice provided by COUNTY that it lacks sufficient funds, as determined by COUNTY in its sole discretion, to continue to perform under this Agreement.

Upon completion of improvements or upon termination of this Agreement, any unexpended balances of funds shall remain with COUNTY.

- 7) **Effect of Termination.** The expiration or termination of this Agreement, for any reason, shall not release SUBRECIPIENT from any obligation or liability to COUNTY, or any requirement or obligation that:
- a) Has already accrued hereunder;
 - b) Comes into effect due to the expiration or termination of the Agreement; or
 - c) Otherwise survives the expiration or termination of this Agreement.

Following the termination of this Agreement, SUBRECIPIENT shall promptly identify all unexpended funds and return all unexpended funds to COUNTY. Unexpended funds are those funds received by SUBRECIPIENT 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.

- 8) **Funds Available and Authorized.** COUNTY certifies that it has received an award sufficient to pay for this Agreement. SUBRECIPIENT understands and agrees that payment of amounts under this Agreement is contingent on COUNTY receiving appropriations or other expenditure authority sufficient to allow COUNTY, in the exercise of its sole administrative discretion, to continue to make payments under this Agreement.
- 9) **Future Support.** COUNTY makes no commitment of future support and assumes no obligation for future support for the activity contracted herein except as set forth in Section 8.
- 10) **Administrative Requirements.** SUBRECIPIENT agrees to its status as a subrecipient, and accepts among its duties and responsibilities the following:
- a) **Financial Management.** SUBRECIPIENT shall comply with 2 CFR Part 200, Subpart D—*Post Federal Award Requirements*, and agrees to adhere to the accounting principles and procedures required therein, use adequate internal controls, and maintain necessary sources documentation for all costs incurred.
 - b) **Revenue Accounting.** Grant revenue and expenses generated under this Agreement should be recorded in compliance with generally accepted accounting principles and/or governmental accounting standards. This requires that the revenues are treated as unearned income or “deferred” until the compliance requirements and objectives of the grant have been met. Revenue may be recognized throughout the life cycle of the grant as the funds are

“earned.” All grant revenues not fully earned and expended in compliance with the requirements and objectives at the end of the period of performance must be returned to the County within 15 days.

- c) **Change in Key Personnel.** SUBRECIPIENT is required to notify COUNTY, in writing, whenever there is a change in SUBRECIPIENT key administrative or programmatic personnel and the reason for the change. Key personnel include but are not limited to: Executive Director, Finance Director, Program Manager, Bookkeeper, or any equivalent to these positions within the organization.
- d) **Cost Principles.** SUBRECIPIENT shall administer the award in conformity with 2 CFR 200, Subpart E. These cost principles must be applied for all costs incurred whether charged on a direct or indirect basis. Costs disallowed by the Federal government shall be the liability of SUBRECIPIENT.
- e) **Period of Availability.** SUBRECIPIENT may charge to the award only allowable costs resulting from obligations incurred during the funding period.
- f) **Match.** Matching funds are not required for this Agreement.
- g) **Budget.** SUBRECIPIENT use of funds may not exceed the amounts specified in the Exhibit B: Subrecipient Program Budget. SUBRECIPIENT may not transfer grant funds between budget lines without the prior written approval of COUNTY. At no time may budget modification change the scope of the original grant application or Agreement.
- h) **Indirect Cost Recovery.** SUBRECIPIENT will receive a non-federally funded 10% indirect cost rate as shown in Exhibit B: SUBRECIPIENT BUDGET.
- i) **Research and Development.** SUBRECIPIENT certifies that this award is not for research and development purposes.
- j) **Payment.** SUBRECIPIENT must submit a final request for payment no later than fifteen (15) days after the end date of this Agreement. Routine requests for reimbursement should be submitted as specified in Exhibit D: Required Financial Reporting and Reimbursement Request.
- k) **Performance Reporting.** SUBRECIPIENT must submit Performance Reports as specified in Exhibit E for each period (monthly, quarterly, and final) during the term of this Agreement.
- l) **Financial Reporting.** Methods and procedures for payment shall minimize the time elapsing between the transfer of funds and disbursement by the grantee or SUBRECIPIENT, in accordance with Treasurer regulations at 31 CFR Part 205. Therefore, upon execution of this Agreement, SUBRECIPIENT will submit completed Exhibit D: Required Financial Reporting and Reimbursement Request on a monthly basis.
- m) **Closeout.** COUNTY will closeout this award when COUNTY determines that all applicable administrative actions and all required work have been completed by SUBRECIPIENT, pursuant to 2 CFR 200.343—*Closeout*. SUBRECIPIENT must liquidate all obligations incurred under this award and must submit all financial (Exhibits F & G), performance, and other reports as required by the terms and conditions of the Federal award and/or COUNTY, no later than 90 calendar days after the end date of this agreement. At closeout, SUBRECIPIENT must account for all residual supplies valued over \$5,000 in the aggregate that were purchased with Federal funds authorized by this Agreement. Compensation to the Federal Agency may be required for residual supplies valued over \$5,000 per 2 CFR 200.313 & 314.

- n) **Universal Identifier and Contract Status.** SUBRECIPIENT shall comply with 2 CFR 25.200-205 and apply for a unique universal identification number using the Data Universal Numbering System (“DUNS”) as required for receipt of funding. In addition, SUBRECIPIENT shall register and maintain an active registration in the Central Contractor Registration database, now located at <http://www.sam.gov>.
- o) **Suspension and Debarment.** SUBRECIPIENT shall comply with 2 CFR 180.220 and 901. This common rule restricts subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities. SUBRECIPIENT is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. SUBRECIPIENT may access the Excluded Parties List System at <http://www.sam.gov>. The Excluded Parties List System contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Orders 12549 and 12689. Awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.
- p) **Lobbying.** SUBRECIPIENT certifies (Exhibit C: Lobbying) that no portion of the Federal grant funds will be used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law and shall abide by 2 CFR 200.450 and the Byrd Anti-Lobbying Amendment 31 U. S. C. 1352. In addition, SUBRECIPIENT certifies that it is a nonprofit organization described in Section 501(c) (3) of the Code, but does not and will not engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act.
- q) **Audit.** SUBRECIPIENT shall comply with the audit requirements prescribed in the Single Audit Act Amendments and the new Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, located in 2 CFR 200.501. SUBRECIPIENT expenditures of \$750,000 or more in Federal funds require an annual Single Audit. SUBRECIPIENT is required to hire an independent auditor qualified to perform a Single Audit. Subrecipients of Federal awards are required under the Uniform Guidance to submit their audits to the Federal Audit Clearinghouse (“FAC”) within 9 months from SUBRECIPIENT’S fiscal year end or 30 days after issuance of the reports, whichever is sooner. The website for submissions to the FAC is <https://harvester.census.gov/facweb/>. At the time of submission to the FAC, SUBRECIPIENT will also submit a copy of the audit to COUNTY. If requested and if SUBRECIPIENT does not meet the threshold for the Single Audit requirement, SUBRECIPIENT shall submit to COUNTY a financial audit or independent review of financial statements within 9 months from SUBRECIPIENT’S fiscal year end or 30 days after issuance of the reports, whichever is sooner.
- r) **Monitoring.** SUBRECIPIENT agrees to allow COUNTY access to conduct site visits and inspections of financial records for the purpose of monitoring in accordance with 2 CFR 200.331. COUNTY, the Federal government, and their duly authorized representatives shall have access to such financial records and other books, documents, papers, plans, records of shipments and payments and writings of SUBRECIPIENT that are pertinent to this Agreement, whether in paper, electronic or other form, to perform examinations and audits and make excerpts and transcripts. Monitoring may be performed onsite or offsite, at COUNTY’S discretion. Depending on the outcomes of the financial monitoring processes, this Agreement shall either a) continue pursuant to the original terms, b) continue pursuant to the original terms and any additional conditions or remediation deemed appropriate by COUNTY, or c) be de-obligated and terminated.
- s) **Record Retention.** SUBRECIPIENT will retain and keep accessible all such financial records, books, documents, papers, plans, records of shipments and payments and writings for a minimum of six (6) years, or such longer period as may be required by the Federal agency or applicable state law, following final payment and termination of this Agreement, or until the

conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later, according to 2 CFR 200.333-337.

- t) **Fiduciary Duty.** SUBRECIPIENT acknowledges that it has read the award conditions and certifications for contained in the State of Oregon Grant Intergovernmental Agreement, that it understands and accepts those conditions and certifications, and that it agrees to comply with all the obligations, and be bound by any limitations applicable to COUNTY, as grantee, under those grant documents.
- u) **Failure to Comply.** SUBRECIPIENT acknowledges and agrees that this Agreement and the terms and conditions therein are essential terms in allowing the relationship between COUNTY and SUBRECIPIENT to continue, and that failure to comply with such terms and conditions represents a material breach of the original grant and this Agreement. Such material breach shall give rise to COUNTY's right, but not obligation, to withhold SUBRECIPIENT grant funds until compliance is met, terminate this Agreement and all associated amendments, reclaim grant funds in the case of omissions or misrepresentations in financial or programmatic reporting, require repayment of any funds used by SUBRECIPIENT 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.

11) Compliance with Applicable Laws

- a) **Public Policy.** SUBRECIPIENT expressly agrees to comply with all public policy requirements, laws, regulations, and executive orders issued by the Federal government, to the extent they are applicable to the Agreement: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, "Equal Employment Opportunity" as amended and supplemented in U.S. Department of Labor regulations (41 CFR Part 60); (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; (ix) all federal laws requiring reporting of Client abuse, and (x) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations; and 2 CFR Part 200 as applicable to SUBRECIPIENT. No federal funds may be used to provide services in violation of 42 U.S.C. 14402.
- b) **Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.).** SUBRECIPIENT agrees that if this Agreement is in excess of \$150,000, the recipient agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, 42 U.S.C. 7401 et seq., and the Federal Water Pollution Control Act, as amended 33 U.S.C. 1251 et seq. Violations shall be reported to the awarding Federal Department and the appropriate Regional Office of the Environmental Protection Agency.
- c) **Energy Efficiency.** SUBRECIPIENT will 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).
- d) **Pro-Children Act.** SUBRECIPIENT shall comply with the Pro-Children Act of 1994 (codified at 20 U.S.C. Section 6081 et. seq.).
- e) **Safeguarding of Client Information.** SUBRECIPIENT shall maintain the confidentiality of client records as required by applicable state and federal law. Without limiting the generality of the

preceding sentence, SUBRECIPIENT shall comply with the following confidentiality laws, as applicable: ORS 433.045, 433.075, 433.008, 433.017, 433.092, 433.096, 433.098, 42 CFR Part 2 and any administrative rule adopted by OHA implementing the foregoing laws, and any written policies made available to COUNTY by OHA. Subcontractor 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.

- f) **Information Privacy/Security/Access.** If the services performed under this Agreement requires SUBRECIPIENT to access or otherwise use any OHA Information Asset or Network and Information System to which security and privacy requirements apply, and OHA grants COUNTY, its subrecipient(s), or both access to such OHA Information Assets or Network and Information Systems, SUBRECIPIENT shall comply and require its staff to which such access has been granted to comply with the terms and conditions applicable to such access or use, including OAR 943-014-0300 through OAR 943-014-0320, as such rules may be revised from time to time. For purposes of this section, “Information Asset” and “Network and Information System” have the meaning set forth in OAR 943-014-0305, as such rule may be revised from time to time.
- a) **Resource Conservation and Recovery.** SUBRECIPIENT 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.
- b) **State Statutes.** SUBRECIPIENT expressly agrees to comply with all statutory requirements, laws, rules, and regulations issued by the State of Oregon, to the extent they are applicable to the Agreement.
- c) **Conflict Resolution.** If potential, actual or perceived conflicts are discovered among federal, state and local statutes, regulations, administrative rules, executive orders, ordinances or other laws applicable to the Services under the Agreement, SUBRECIPIENT may in writing request County to resolve the conflict. SUBRECIPIENT shall specify if the conflict(s) create a problem for the design or other Services required under the Agreement. The County shall undertake reasonable efforts to resolve the issue but is not required to deliver any specific answer or product. SUBRECIPIENT shall remain obligated to independently comply with all applicable laws and no action by COUNTY shall be deemed a guarantee, waiver, or indemnity for non-compliance with any law.
- d) **Disclosure of Information.** Any confidential or personally identifiable information (2 CFR 200.82) acquired by SUBRECIPIENT during the execution of the project should not be disclosed during or upon termination or expiration of this Agreement for any reason or purpose without the prior written consent of COUNTY. SUBRECIPIENT further agrees to take reasonable measures to safeguard such information (2 CFR 200.303) and to follow all applicable federal, state and local regulations regarding privacy and obligations of confidentiality.
- e) **Mileage reimbursement.** If mileage reimbursement is authorized in SUBRECIPIENT budget or by the written approval of COUNTY, mileage must be paid at the rate established by SUBRECIPIENT’s written policies covering all organizational mileage reimbursement or at the IRS mileage rate at the time of travel, whichever is lowest.
- f) **Human Trafficking.** In accordance with 2 CFR Part 175, SUBRECIPIENT, its employees, contractors and subrecipients under this Agreement and their respective employees may not:

- Engage in severe forms of trafficking in persons during the period of the time the award is in effect;
- Procure a commercial sex act during the period of time the award is in effect; or
- Used forced labor in the performance of the Agreement or subaward under this Agreement.

SUBRECIPIENT must inform COUNTY immediately of any information SUBRECIPIENT receives from any source alleging a violation of any of the above prohibitions in the terms of this Agreement. COUNTY may terminate this Agreement, without penalty, for violation of these provisions. COUNTY's right to terminate this Agreement unilaterally, without penalty, is in addition to all other remedies under this Agreement. SUBRECIPIENT must include these requirements in any subaward made to public or private entities under this Agreement.

12) Federal and State Procurement Standards

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

13) General Agreement Provisions.

- a) **Non-appropriation Clause.** If payment for activities and programs under this Agreement extends into COUNTY's next fiscal year, COUNTY's obligation to pay for such work is subject to approval of future appropriations to fund the Agreement by the Board of County Commissioners.
- b) **Indemnification.** SUBRECIPIENT agrees to indemnify and hold COUNTY and its elected officials, officers, employees, and agents, and the State of Oregon and its officers, employees and agents harmless with respect to any claim, cause, damage, action, penalty or other cost (including attorney's and expert fees) arising from or related to (1) SUBRECIPIENT's negligent or willful acts or those of its employees, agents or those under SUBRECIPIENT's control; or (2)

SUBRECIPIENT'S performance under this Agreement including, but not limited to, any claim by a State or Federal funding source that SUBRECIPIENT used funds for an ineligible purpose. SUBRECIPIENT is responsible for the actions of its own agents and employees, and COUNTY assumes no liability or responsibility with respect to SUBRECIPIENT's actions, employees, agents or otherwise with respect to those under its control.

- c) **Insurance.** During the term of this Agreement, SUBRECIPIENT shall maintain in force, at its own expense, each insurance noted below:
- 1) **Commercial General Liability.** SUBRECIPIENT shall obtain, at SUBRECIPIENT's expense, and keep in effect during the term of this Agreement, Commercial General Liability Insurance covering bodily injury 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, elected officials, 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.** If the Agreement involves the use of vehicles, SUBRECIPIENT shall obtain at SUBRECIPIENT expense, and keep in effect during the term of this Agreement, Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The combined single limit per occurrence for bodily injury, death and property damage shall not be less than \$1,000,000. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for "Commercial General Liability" and "Automobile Liability").
 - 3) **Professional Liability.** If the Agreement involves the provision of professional services, SUBRECIPIENT shall obtain and furnish COUNTY evidence of Professional Liability Insurance in the amount of not less than \$1,000,000 combined single limit per occurrence/\$2,000,000 general annual aggregate for malpractice or errors and omissions coverage for the protection of COUNTY, its officers, elected officials 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 \$500,000.
 - 5) **"Tail" Coverage.** If any of the required insurance policies is on a "claims made" basis, such as professional liability insurance, SUBRECIPIENT 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 Agreement, for a minimum of 24 months following the later of : (i) the SUBRECIPIENT's completion and COUNTY's acceptance of all Services required under this Agreement or, (ii) the expiration of all warranty periods provided under this Agreement. Notwithstanding the foregoing 24-month requirement, if SUBRECIPIENT 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 SUBRECIPIENT may request and OHA may grant approval of the maximum "tail " coverage period reasonably available in

the marketplace. If OHA approval is granted, the SUBRECIPIENT shall maintain “tail” coverage for the maximum time period that “tail” coverage is reasonably available in the marketplace.

- 6) **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, elected officials, officers, and employees” as an additional insured.
 - 7) **Notice of Cancellation.** There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 30 days written notice to COUNTY. Any failure to comply with this provision will not affect the insurance coverage provided to COUNTY. The 30 days-notice of cancellation provision shall be physically endorsed on to the policy.
 - 8) **Insurance Carrier Rating.** Coverage provided by SUBRECIPIENT must be underwritten by an insurance company deemed acceptable by COUNTY. Insurance coverage shall be provided by companies admitted to do business in Oregon or, in the alternative, rated A- or better by Best’s Insurance Rating. COUNTY reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.
 - 9) **Certificates of Insurance.** As evidence of the insurance coverage required by this Agreement, SUBRECIPIENT shall furnish a Certificate of Insurance to COUNTY. COUNTY and its elected officials, employees and officers must be named as an additional insured on the Certificate of Insurance. No Agreement shall be in effect until the required certificates have been received, approved, and accepted by COUNTY. A renewal certificate will be sent to COUNTY 10 days prior to coverage expiration.
 - 10) **Primary Coverage Clarification.** SUBRECIPIENT coverage will be primary in the event of a loss and will not seek contribution from any insurance or self-insurance maintained by, or provided to, the additional insureds listed above.
 - 11) **Cross-Liability Clause.** A cross-liability clause or separation of insured’s condition will be included in all general liability, professional liability, and errors and omissions policies required by the Agreement.
 - 12) **Waiver of Subrogation.** SUBRECIPIENT agrees to waive their rights of subrogation arising from the work performed under this Agreement.
- d) **Assignment.** This Agreement may not be assigned in whole or in part without the prior express written approval of COUNTY.
 - e) **Independent Status.** SUBRECIPIENT is independent of COUNTY and will be responsible for any federal, state, or local taxes and fees applicable to payments hereunder. SUBRECIPIENT is not an agent of COUNTY or the State of Oregon and undertakes this work independent from the control and direction of COUNTY and the State of Oregon excepting as set forth herein. SUBRECIPIENT shall not seek or have the power to bind COUNTY or the State of Oregon in any transaction or activity.
 - f) **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.

- g) **Governing Law.** This Agreement is made in the State of Oregon, and shall be governed by and construed in accordance with the laws of that state without giving effect to the conflict of law provisions thereof. Any litigation between COUNTY and SUBRECIPIENT arising under this Agreement or out of work performed under this Agreement shall occur, if in the state courts, in the Clackamas County court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the State of Oregon.
- h) **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.
- i) **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.
- j) **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.
- k) **Binding Effect.** This Agreement shall be binding on all parties hereto, their heirs, administrators, executors, successors and assigns.
- l) **Integration.** This Agreement contains the entire Agreement between COUNTY and SUBRECIPIENT and supersedes all prior written or oral discussions or Agreements.

This Agreement consists of twelve (12) sections plus the following exhibits which by this reference are incorporated herein.

- **Exhibit A:** SUBRECIPIENT Statement of Program Objectives
- **Exhibit B:** SUBRECIPIENT Program Budget
- **Exhibit C:** Congressional Lobbying Certificate
- **Exhibit D:** Required Financial Reporting
- **Exhibit D.1** SUBRECIPIENT Reimbursement Request
- **Exhibit E:** Quarterly Performance Reports and State of Oregon HIV Prevention Program Workbook for FY2019
- **Exhibit F:** Final Financial Report
- **Exhibit G:** Business Associate Agreement

Signature page follows

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

CLACKAMAS COUNTY

OUTSIDE IN, INC.

Commissioner: Tootie Smith, Chair
Commissioner: Sonya Fischer
Commissioner: Paul Savas
Commissioner: Martha Schrader
Commissioner: Mark Shull

Signing on Behalf of the Board,

By: _____
Chair of County Commissioners

By: **Patricia Patron** Digitally signed by Patricia Patron
DN: cn=Patricia Patron, o=Outside In, ou,
email=patriciap@outsidein.org, c=US
Date: 2021.08.05 17:24:16 -0700

Patricia Patrón, Executive Director

Dated: _____

Dated: 8/5/21 _____

Approved to Form

By: Andrew Naylor
County Counsel

Dated: 6/29/21 _____

EXHIBIT A

OUTSIDE IN SCOPE OF WORK FOR HIV TESTING

Background:

This work will be conducted to accomplish, in part, the following strategies for HIV Prevention (Program Element 7) CDC HIV Prevention & Surveillance Integrated Grant 2018-2022:

- ❖ Identify person with HIV infection or uninfected persons at risk for HIV infection which includes:
 - HIV testing
 - Partner Services
 - Data-to-care
- ❖ Comprehensive prevention services for HIV-negative persons at risk for HIV infection that includes:
 - PrEP/nPEP referrals and navigation

Section I: Scope of Work

A. SUBRECIPIENT agrees to the following:

1. Conduct confidential HIV Testing Clinics as described below:
 - a. Clackamas Service Center 2 times per week (Days and times to be determined by mutual agreement of both parties.)
 - b. The Founders Clinic 1 time per week (Days and times to be determined by mutual agreement of both parties.)
 - c. Conduct a minimum of 250 HIV tests annually targeting people who inject drugs.
 - i) SUBRECIPIENT shall direct services to people who inject drugs and other affected populations known through local epidemiology to be at disproportionate risk for HIV infection. SUBRECIPIENT shall use the Oregon Integrated HIV Prevention and Care Plan 2017 – 2021 plan and local epidemiological data to guide decisions. All oversight, quality assurances, liability and other processes for the provision of HIV testing and counseling are the sole responsibility of SUBRECIPIENT.
 - d. Offer same day confirmatory HIV testing to individuals testing positive to rapid preliminary testing.
2. Partner Services facilitation to ensure linkage to medical care / support services and to support the notification of sex and needle-sharing partners.
 - a. SUBRECIPIENT shall comply with Oregon disease reporting guidelines and inform clients with positive HIV test results that their health department will

contact them to offer help with partner services and linking to care. Per investigative guidelines, COUNTY requires that individuals with preliminary positive HIV rapid tests who refuse same day confirmatory testing be reported.

- b. SUBRECIPIENT shall refer HIV confirmatory positive clients and preliminary positive clients declining confirmatory testing to COUNTY Partner Services program. A referral system will be mutually established by SUBRECIPIENT and COUNTY. In collaboration with COUNTY, SUBRECIPIENT shall ensure linkage into medical care and supportive services.
3. Provide education around Pre-Exposure Prophylaxis (“PrEP”) and Non-occupational Post Exposure Prophylaxis (“nPEP”) awareness with persons at risk to prevent acquisition of HIV.
4. Ensure all non-licensed team members conducting HIV testing have received trainings as required by the Oregon Health Authority HIV/STD/TB Program.
5. Routinely and with 95% accuracy collect and enter required variables into data system housed and managed by Multnomah County Public Health.
6. Provide agency level medical oversight and medical authorization of non-licensed employees.
7. Obtain and maintain a Clinical Laboratory Improvement Amendments (“CLIA”) certificate of waiver for rapid HIV.
8. Submit a monthly numbers report and quarterly narrative report to COUNTY.
9. SUBRECIPIENT shall comply with Oregon Health Authority HIV/STD/TB Program (“OHA/HST”) revised data management guidelines short-term plan and pending finalized plan.
10. If SUBRECIPIENT is contacted by the media for information regarding the services under this contract, the SUBRECIPIENT is required to notify Anna Summer (503-742-5382) to discuss the most appropriate response. Contact shall be made by telephone the same business day or the following business day if after hours.

B. COUNTY agrees to:

1. Arrange SUBRECIPIENT access to no cost Oregon State Public Health Laboratory standard and confirmatory HIV testing.
 - a. <https://apps.state.or.us/Forms/Served/le0042p.pdf> On-line fillable Oregon State Public Health Laboratory Form.
2. Prioritize access to Partner Services for clients testing HIV confirmatory positive.

3. Provision of local and relevant (as mutually determined between both parties) data to support this Scope of Work.
4. Disease Intervention Specialist (“DIS”) staff time to collaborate and plan to accomplish this Scope of Work.
5. Infectious Disease Control and Prevention management time to provide oversight and support this Scope of Work.

C. SUBRECIPIENT reporting requirements:

1. Quarterly Workbook completion and submitted to Clackamas County Public Health Infectious Disease Control Program (“CCPH IDCP”) by the following dates: October 15, 2021; January 15, April 15, and July 15, 2022;
2. Quarterly management check-in meetings to review deliverables - dates to be scheduled between SUBRECIPIENT and CCPH IDCP management during week of workbook completion (see dates above).
3. Routine SUBRECIPIENT internal tracking reports of prevention services activities not provided in Evaluation Web or Workbook reporting formats provided to CCPH IDCP program manager and staff to utilize for planning and intervention services as needed [frequency of reporting, means of verification and person(s) responsible outlined in internal tracking sheet developed by SUBRECIPIENT/CCPH IDCP management.
4. Quarterly in-person meetings as well as on-going communication as needed w/ CCPH DIS and SUBRECIPIENT field staff to coordinate outreach and services.

EXHIBIT B
SUBRECIPIENT BUDGET

HIV Prevention - FY22 Subcontractor Line Item Budget	Contract Amount: \$22,184
Complete all yellow shaded areas and cell values colored blue.	
For assistance, contact: Barbara Keepes, 971-673-0573, barbara.j.keepes@state.or.us	
County: Clackamas	
Subcontractor: OUTSIDE IN	
Completed by: (include contact information): ANNI ZIELER, CONTROLLER, anniz@outsidein.org	
Date Completed: 4/1/2021	

IMPORTANT:
 1. This form must be completed by staff responsible for program budgets and fiscal monitoring.
 2. If your agency is subcontracting for services, a separate line item budget is required for each subcontractor.

Budget Categories	Description						(A) Services / Costs Sub-Total	Federal Portion CFDA #93.940	State Portion
A) Personnel	Annual Salary & Fringe (Direct Services)	Name & Title	FTE based on 2080 hr work year	Rate / hr	Hrs / mo	# of mo. budgeted	Total	Total	Total
		<i>Example Jane Doe, R.N.</i>	0.50	#DIV/0!	0.00	12	#DIV/0!	#DIV/0!	#DIV/0!
		1 Syringe Exchange Specialist	0.20	\$19.55	34.67	12	\$8,133	\$8,133	\$0
		3 IDUHS Program Coordinator (Haven Wheelock)	0.08		13.00	12	\$5,175	\$5,175	\$0
	Total		0.28	\$19.55	47.67		\$13,307	\$13,308	\$0
B) Fringe Benefits	Personnel Costs						Total:	Total:	Total:
	\$13,307.35							\$4,258	\$0

		Include calculations for lodging, per diem, mileage, location of travel, number of people traveling and purpose of travel. Mileage rate may not exceed \$0.56 / mile. Do not budget mileage on county owned cars.		
C) Travel	Item	Detail		
	1	Round Trip from OI to Clackamas Service Center and Oregon City is 65 miles per week Total	\$1,892	\$0
	2		\$0	\$0
	3		\$0	\$0
	Total		\$1,892	\$0
Equipment is defined as costing \$5000 or greater and having a useful life of at least one year. Equipment purchases must be preapproved.				
D) Equipment	Item	Detail		
	1		\$0	\$0
	3		\$0	\$0
	Total		\$0	\$0
List supply detail including office & medical supplies. If using an allocation method, detail how costs are allocated, (i.e. FTE, sq footage, etc). For supplies, list item, quantity and cost. Preprinted, purchased materials are considered a supply item, direct printing costs of materials, is to be listed in section G, Other. The purchase of furniture is not allowed in this award.				
E) Supplies	Item	List item and cost		
	1	Alere HIV test kits \$16.40 @ 25 per year	\$410	\$0
	2	Safer Sex Supplies - Condoms and lube for distribution in Clackamas County	\$200	\$0
	3	Misc testing supplies (lances bandades gauze ect)	\$100	\$0
	4		\$0	
	5		\$0	
Total		\$710	\$0	\$710
List all consultant costs and area in which consultative services are to be provided				
F) Consultants	Summarize cost for each consultant			
	1		\$0	\$0
	2		\$0	\$0
	Total		\$0	\$0

G) Other	List costs for staff training or trainings that the LPHA will be providing, marketing / advertising costs for all replication and distribution of materials, telephone, and other direct costs not already indicated. Printing costs, postage and office equipment rental. Note: food and beverages are only allowable when used as an incentive or as an integral part of an intervention. Incentives must be detailed, including individual costs, purpose of the incentive, and how incentive is to be used and tracked. For negotiable incentives, e.g., gift cards, a copy of cash handling procedures must be submitted with any request for incentive use. Any costs that are allocated costs must include allocation method.					Item	Detail			
						1		\$0	\$0	\$0
						2		\$0	\$0	\$0
						3		\$0	\$0	\$0
						Total		\$0	\$0	\$0
H) Contractual	List all subcontracts, submit a separate line item budget for each contractor					Item	Subcontracted Agency			
						1		\$0	\$0	\$0
						2		\$0	\$0	\$0
						3		\$0	\$0	\$0
						Total		\$0	\$0	\$0
I) Total Direct Costs	Sum of A - H					Total		\$20,168	\$17,566	\$2,602
J) Indirect Costs	10% of total direct costs (state funded)					Item		\$2,017	\$0	\$2,017
						Total				
Total Direct Program Expenses + Indirect Costs - must match contract amount - sum of I & J								\$22,184	\$17,566	\$4,619

**EXHIBIT C
CONGRESSIONAL LOBBYING CERTIFICATE**

The undersigned certifies, to the best of his or her knowledge and belief, that:

No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, 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 awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

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 undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions[as amended by "Government-wide Guidance for New Restrictions on Lobbying," 61 Federal Regulations 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq.)].

The undersigned 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 shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code (as amended by the Lobbying Disclosure Act of 1995). 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.

[Note: Pursuant to 31 U.S.C. §1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each expenditure or failure.]

The Authorized Representative certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Organization understands and agrees that the provisions of 31 U.S.C. §3801, et seq., apply to this certification and disclosure, if any.

Outside In	
Organization Name	Award Number or Project Name
Outside In	
Name and Title of Authorized Representative	
Patricia Patron <small>Digitally signed by Patricia Patron DN: cn=Patricia Patron, o=Outside In, ou, email=patriciap@outsidein.org, c=US Date: 2021.08.05 17:25:10 -0700</small>	Executive Director 8/5/21
Signature	Date

EXHIBIT D
REQUIRED FINANCIAL REPORTING AND REIMBURSEMENT REQUEST

PROJECT NAME: HIV Testing and Counseling	AGREEMENT # 22-013 Contract #10131
SUB-RECIPIENT: OUTSIDE IN, INC.	

COMPENSATION AND RECORDS

- A. COUNTY shall compensate SUBRECIPIENT for satisfactorily completing activities described in EXHIBIT A, above.
- B. Total payments to SUBRECIPIENT shall not exceed **\$22,184**.
- C. COUNTY agrees to pay SUBRECIPIENT true and verifiable expenses on a monthly basis contingent on COUNTY receiving award funds from the State of Oregon.
- B. Method of Payment: To receive payment, SUBRECIPIENT shall submit Request for Reimbursement Form monthly for true and verifiable expenses as outlined below:

SUBRECIPIENT shall submit Request for Reimbursement Form monthly for true and verifiable expenses by the tenth day of the month following that in which service was performed. Requests shall be submitted to Clackamas County Public Health (“CCPHD”), Attn: Sherry Olson 2051 Kaen Road, Suite 367, Oregon City, Oregon 97045, or electronically to: SOlson4@co.clackamas.or.us. When submitting electronically, designate SUBRECIPIENT name and contract **Agreement # 22-013 Contract #10131** in the subject of the e-mail.

Within thirty (30) days after receipt of the bill, provided that the Program Supervisor has approved the service specified on the invoice, COUNTY shall pay the amount requested to SUBRECIPIENT.

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

SUBRECIPIENT shall complete the State of Oregon HIV Prevention Program Workbook for FY2021 (Exhibit E) **quarterly**. CCPHD will complete their section of the workbook and send the workbook electronically via E-mail to SUBRECIPIENT by the tenth day of the month. SUBRECIPIENT will complete its sections and return to CCPHD by the 20th of the month. **Completed workbook due to Oregon Health Authority (“OHA”) 30 DAYS AFTER QUARTER END.**

Reporting Periods:

**07/01/2021 - 09/30/2021, 10/31/2020 - 12/31/2021, 01/01/2022 - 03/31/2022, 04/01/2022
– 06/30/2022**

(Sample of Request for reimbursement form on next page)

EXHIBIT D1: SUBRECIPIENT REQUEST FOR REIMBURSEMENT CLACKAMAS COUNTY PUBLIC HEALTH DIVISION					
Organization:	Outside In		CLAIM PERIOD:	Note: This form derives from the approved budget in your grant agreement. All expenditures must have adequate supporting documentation.	
Service:	HIV Testing				
Program Contact:					
Agreement Term:	July 1, 2021 – June 30, 2022				
Agreement Number:	22-013				
	Approved Grant Amount	Monthly Grant Expenditure	Total Monthly Expenditure	YTD Grant Expenditure	Balance
Category					
Personnel (List salary, FTE & Fringe costs for each position)					
Syringe Exchange Specialist	\$40,652.00	\$ -	\$ -	\$ -	\$ -
IDUHS Program Coordinator	\$68,994.00	\$ -	\$ -	\$ -	\$ -
Total Fringe: 32%	\$13,307.35				
Total Personnel Services	\$ -	\$ -	\$ -	\$ -	\$ -
Supplies					
Testing, safe sex supplies	\$710.00	\$ -	\$ -	\$ -	\$ -
Travel					
Mileage (.56/milex3,380 miles)	\$1,892.00	\$ -	\$ -	\$ -	\$ -
Additional (please specify)					
	\$ -	\$ -	\$ -	\$ -	\$ -
Total Programmatic Costs	\$20,168.00	\$ -	\$ -	\$ -	\$ -
Indirect Rate (10% non-federal)	\$2,017.00	\$ -	\$ -	\$ -	\$ -
Total Grant Costs	\$22,184.00	\$ -	\$ -	\$ -	\$ -

Clackamas County and the Federal government retain the right to inspect all financial records and other books, documents, papers, plans, records of shipments and payments and writings of subrecipient that are pertinent to this Agreement.

CERTIFICATION

By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812).

Prepared by:				
Authorized SUBRECIPIENT Official:				
Date:				
Department Review.				
Project Officer Name:				
Department:				
Signature:				
Department: forward to Grant Accountant for review and processing				Grant Accountant Initial/Date:

EXHIBIT E
MONTHLY AND FINAL PERFORMANCE REPORT

<i>PROJECT NAME: HIV Testing and Counseling</i>	<i>AGREEMENT #22-013 Contract #10131</i>
<i>SUBRECIPIENT: OUTSIDE IN, INC.</i>	

OHA will send the HIV Prevention Program Workbook to SUBRECIPIENT and CCPHD. SUBRECIPIENT will complete the workbook and send to CCPHD 10 days prior to the OHA due date (30 DAYS AFTER QUARTER END)

Reporting Periods:

07/01/2021- 09/30/2021, 10/31/2021- 12/31/2021, 01/01/2022 - 03/31/2022, 04/01/2022 – 06/30/2022

**CLACKAMAS COUNTY AND OUTSIDE IN, INC SUBRECIPIENT AGREEMENT
 EXHIBIT F: FINAL FINANCIAL REPORT**

Project Name: HIV Testing and Counseling	Agreement #: 22-013
Federal Award #:	Date of Submission: XX/XX/XX
Subrecipient: OUTSIDE IN, INC.	
Has Subrecipient submitted all requests for reimbursement? Y/N	
Has Subrecipient met all programmatic closeout requirements? Y/N	

Final Financial Report

Report of Funds received, expended, and reported as match (if applicable) under this agreement

Total Federal Funds authorized on this agreement:	\$17,566
Year-to-Date Federal Funds requested for reimbursement on this agreement:	
Total Federal Funds received on this agreement:	
Balance of unexpended non-Federal Funds (Line 1 minus Line 3):	

By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812).

Subrecipient's Certifying Official (printed): _____

Subrecipient's Certifying Official (signature): _____

Subrecipient's Certifying Official's title: _____

**EXHIBIT G
BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement is entered into as of _____ (“Effective Date”) by and between **Clackamas County, on behalf of its Health, Housing and Human Services, Public Health Division** (“Covered Entity”) and **Outside In** (“Business Associate”) in conformance with the Health Insurance Portability and Accountability Act of 1996, and its regulations (“HIPAA”).

RECITALS

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

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

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

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

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

Now, therefore, the parties hereby agree as follows:

SECTION I – DEFINITIONS

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

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

SECTION II – OBLIGATIONS AND ACTIVITIES OF THE BUSINESS ASSOCIATE

The Business Associate agrees to the following:

- 2.1 Not to use or further disclose PHI other than as permitted or required by this Business Associate Agreement or as Required by Law;
- 2.2 To use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to Electronic PHI, to prevent use or disclosure of PHI other than as provided for by this Business Associate Agreement;
- 2.3 To mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a use or disclosure of PHI by the Business Associate in violation of the requirements of this Business Associate Agreement;
- 2.4 To immediately report to the Covered Entity any use or disclosure of PHI not provided for by this Business Associate Agreement of which it becomes aware, including any Security Incident of which it becomes aware;
- 2.5 In accordance with 45 CFR §§164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any agent, including a subcontractor, that creates, receives, maintains, or transmits PHI on behalf of the Business Associate agrees in writing to the same restrictions, conditions and requirements that apply to the Business Associate with respect to such PHI;
- 2.6 To provide access, at the request of the Covered Entity, and in the time and manner designated by the Covered Entity, to PHI in a Designated Record Set, to the Covered Entity or, as directed by the Covered Entity, to the Individual or the Individual’s designee as necessary to meet the Covered Entity’s obligations under 45 CFR §164.524; provided, however, that this Section 2.6 is applicable only to the extent the Designated Record Set is maintained by the Business Associate for the Covered Entity;
- 2.7 To make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR §164.526 at the request of the Covered Entity or an Individual, and in the time and manner designated by the Covered Entity; provided, however, that this Section 2.7 is applicable only to the extent the Designated Record Set is maintained by the Business Associate for the Covered Entity;
- 2.8 To make internal practices, books and records, including policies and procedures on PHI, relating to the use and disclosure of PHI received from, or created or received by the Business Associate

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

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

- 3.1 Business Associate agrees to make uses and disclosures and requests for PHI consistent with the Covered Entity's minimum necessary policies and procedures.
- 3.2 Except as otherwise limited in this Business Associate Agreement, the Business Associate may use or disclose PHI to perform functions, activities or services for, or on behalf of, the Covered Entity as specified in the Services Agreement, provided that such use or disclosure would not violate the HIPAA Rules if done by the Covered Entity; and,
- 3.3 Except as otherwise limited in this Business Associate Agreement, the Business Associate may:
 - a. **Use for management and administration.** Use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate; and,
 - b. **Disclose for management and administration.** Disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the

Business Associate, provided that disclosures are Required by Law, or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as Required by Law or for the purposes for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

SECTION IV – NOTICE OF PRIVACY PRACTICES

- 4.1 If requested, the Covered Entity shall provide the Business Associate with the notice of privacy practices that the Covered Entity produces in accordance with 45 CFR §164.520, as well as any changes to such notice. Covered Entity shall (a) provide the Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect the Business Associate's permitted or required uses and disclosures; (b) notify the Business Associate of any restriction to the use or disclosure of PHI that the Covered Entity has agreed to in accordance with 45 CFR §164.522, to the extent that such restrictions may affect the Business Associate's use or disclosure of PHI; and (c) not request the Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Standards if done by the Covered Entity, except as set forth in Section 3.2 above.

SECTION V – BREACH NOTIFICATION REQUIREMENTS

- 5.1 With respect to any Breach, the Covered Entity shall notify each individual whose Unsecured PHI has been, or is reasonably believed by the Covered Entity to have been, accessed, acquired, used, or disclosed as a result of such Breach, except when law enforcement requires a delay pursuant to 45 CFR §164.412. This notice shall be:
- a. Without unreasonable delay and in no case later than 60 calendar days after discovery of a Breach.
 - b. In plain language including and to the extent possible:
 - 1) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
 - 2) A description of the types of Unsecured PHI that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
 - 3) Any steps Individuals should take to protect themselves from potential harm resulting from the Breach;
 - 4) A brief description of what the Covered Entity and/or Business Associate is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against any further Breaches; and,
 - 5) Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, web site, or postal address.
 - c. By a method of notification that meets the requirements of 45 CFR §164.404(d).
 - d. Provided to the media when required under 45 CFR §164.406 and to the Secretary pursuant to 45 CFR §164.408.

5.2. Business Associate shall promptly provide any information requested by Covered Entity to provide the information described in Section 5.1.

SECTION VI – TERM AND TERMINATION

- 6.1 **Term.** The term of this Business Associate Agreement shall be effective as of the date set forth above in the first paragraph and shall terminate when all of the PHI created, maintained, transmitted

or received by the Business Associate on behalf of the Covered Entity, is destroyed or returned to the Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.

- 6.2 **Termination for Cause.** Upon the Covered Entity's knowledge of a material breach of this Business Associate Agreement by the Business Associate, the Covered Entity shall provide an opportunity for the Business Associate to cure the breach or end the violation. The Covered Entity shall terminate this Business Associate Agreement and the Services Agreement if the Business Associate does not cure the breach or end the violation within the time specified by the Covered Entity, or immediately terminate this Business Associate Agreement if cure is not reasonably possible.

If the Business Associate fails to cure a breach for which cure is reasonably possible, the Covered Entity may take action to cure the breach, including but not limited to obtaining an injunction that will prevent further improper use or disclosure of PHI. Should such action be taken, the Business Associate agrees to indemnify the Covered Entity for any costs, including court costs and attorneys' fees, associated with curing the breach.

Upon the Business Associate's knowledge of a material breach of this Business Associate Agreement by the Covered Entity, the Business Associate shall provide an opportunity for the Covered Entity to cure the breach or end the violation. The Business Associate shall terminate this Business Associate Agreement and the Services Agreement if the Covered Entity does not cure the breach or end the violation within the time specified by the Business Associate, or immediately terminate this Business Associate Agreement if the Covered Entity has breached a material term of this Business Associate Agreement if cure is not reasonably possible.

6.3 **Effect of Termination.**

- a. **Return or Destruction of PHI.** Except as provided in Section 6.3(b), upon termination of this Business Associate Agreement, for any reason, the Business Associate shall return, or if agreed to by the Covered Entity, destroy all PHI received from the Covered Entity, or created, maintained or received by the Business Associate on behalf of the Covered Entity and retain no copies. This provision shall apply to PHI that is in the possession of subcontractors or agents of the Business Associate.
- b. **Return or Destruction of PHI Infeasible.** In the event that the Business Associate determines that returning or destroying PHI is infeasible, the Business Associate shall provide to the Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction of the PHI is infeasible, the Business Associate shall extend the protections of this Business Associate Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as the Business Associate maintains such PHI. In addition, the Business Associate shall continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to Electronic PHI to prevent use or disclosure of the PHI, for as long as the Business Associate retains the PHI.

SECTION VII – GENERAL PROVISIONS

- 7.1 **Regulatory references.** A reference in this Business Associate Agreement to the HIPAA Rules or a section in the HIPAA Rules means that Rule or Section as in effect or as amended from time to time.
- 7.2 **Compliance with law.** In connection with its performance under this Business Associate Agreement, Business Associate shall comply with all applicable laws, including but not limited to laws protecting the privacy of personal information about Individuals.

- 7.3 **Amendment.** The Parties agree to take such action as is necessary to amend this Business Associate Agreement from time to time. All amendments must be in writing and signed by both Parties.
- 7.4 **Indemnification by Business Associate.** Business Associate agrees to indemnify, defend and hold harmless the Covered Entity and its commissioners, employees, directors, officers, subcontractors, agents or other members of its workforce, each of the foregoing hereinafter referred to as "Indemnified Party," against all actual and direct losses suffered by the Indemnified Party and all liability to third parties arising from or in connection with Business Associate's breach of Sections II and III of this Business Associate Agreement. Accordingly, on demand, Business Associate shall reimburse any Indemnified Party for any and all actual and direct losses, liabilities, fines, penalties, costs or expenses (including reasonable attorneys' fees) which may for any reason be imposed upon any Indemnified Party by reason of any suit, claim, action, proceeding or demand by any third party which results for Business Associate's breach hereunder. The obligation to indemnify any Indemnified Party shall survive the expiration or termination of this Agreement for any reason.
- 7.5 **Survival.** The respective rights and obligations of Business Associate under Section II of this Business Associate Agreement shall survive the termination of the Services Agreement and this Business Associate Agreement.
- 7.6 **Interpretation.** Any ambiguity in this Business Associate Agreement shall be resolved to permit Covered Entity to comply with the HIPAA Rules.

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

Business Associate

Covered Entity

Outside In

Clackamas County

By: Patricia Patrón
Digitally signed by Patricia Patrón
DN: cn=Patricia Patrón, o=Outside In, ou,
email=patriciap@outsidein.org, c=US
Date: 2021.08.05 17:26:31 -0700'

By: _____

Patricia Patrón,

Rodney A. Cook

Title: Executive Director

Title: Interim Director, H3S

Date: 8/5/21

Date: _____

September 16, 2021

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Amendment #01 to a Subrecipient Grant Agreement with
CODA, Inc. for Housing Assistance Program Services

Purpose/Outcomes	Provides housing assistance and services for Clackamas County residents in alcohol and drug recovery to assist them in becoming self-sufficient and obtaining permanent housing placements.
Dollar Amount and Fiscal Impact	Amendment #01 does not change the value of the Agreement. The agreement maximum value remains \$599,772.53.
Funding Source	No County General Funds are involved. Federal and State funds provided by the State of Oregon, Community Mental Health Program (CMHP).
Duration	Effective July 1, 2021 and terminates on September 30, 2021.
Previous Board Action	Agreement reviewed and approved March 19, 2020, Agenda Item 031920-A4.
Strategic Plan Alignment	Ensuring safe, healthy and secure communities through the provision of housing assistance and services for Clackamas County residents in recovery.
Counsel Review	Amendment reviewed and approved August 9, 2021 (AN)
Procurement Review	Was this item reviewed by Procurement? No. Review not required for subrecipient agreements and amendments.
Contact Person	Mary Rumbaugh, Director – Behavioral Health Division 503-742-5305
Contract No.	Subrecipient 20-029 / Behavioral Health 9371

BACKGROUND:

The Behavioral Health Division of the Health, Housing & Human Services Department requests the approval of Amendment #01 to a Subrecipient Grant Agreement with CODA, Inc. for Housing Assistance Program services for Clackamas County residents in alcohol and drug recovery. CODA will support the substance abuse treatment and early recovery efforts of the participants while also focusing on participants becoming self-sufficient and obtaining permanent housing placements. Participants need to be fully engaged in alcohol and drug treatment in order to access housing services. Behavioral Health has engaged CODA to provide these services to Clackamas County residents since 2012.

Amendment #01, effective July 1, 2021 and continues through September 30, 2021, extends the term of the Agreement three (3) months to ensure no gap in services while a formal procurement process for these services is completed.

Healthy Families. Strong Communities.

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

Clackamas.us/h3s

RECOMMENDATION:

Staff recommends approval of this Amendment.

Respectfully submitted,

A handwritten signature in black ink that reads "Mary A. Rumbaut". The signature is written in a cursive style with a horizontal line through the middle of the letters.

For Rodney A. Cook

Rodney A. Cook, Interim Director
Health, Housing & Human Services Department

Subrecipient Amendment

<u>Subrecipient Agreement Number: 20-029 (BH 9371)</u>	<u>Board Order Number: N/A</u>
<u>Department/Division: H3S/Behavioral Health</u>	<u>Amendment No. 01</u>
<u>Subrecipient: CODA, Inc.</u>	<u>Amendment Requested By: Mary Rumbaugh</u>
Changes: <input type="checkbox"/> Scope of Service	<input type="checkbox"/> Agreement Budget
<input checked="" type="checkbox"/> Agreement Time	<input checked="" type="checkbox"/> Other: Update reporting period/dates

Justification for Amendment:

This Amendment #1 is entered into between CODA, Inc. ("SUBRECIPIENT") and Clackamas County ("COUNTY") and shall become part of that Subrecipient Grant Agreement ("Agreement") entered into between both parties on March 19, 2020. The purpose of this Amendment #1 is to extend the term of Agreement by an additional three (3) months through September 30, 2021, and to add additional funding source information.

This Amendment #1 also updates the grant accountant and financial and performance reporting periods and dates.

Compensation is unchanged by this Amendment #1.

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

AMEND Clackamas County Data, Grant Accountant:

Grant Accountant: Ke`ala Adolpho
Clackamas County – Finance 2051 Kaen Road Oregon City, OR 97045 (503) 742-5410 KAdolpho@clackamas.us

TO READ:

Grant Accountant: Nicole Unck
Clackamas County – Finance 2051 Kaen Road Oregon City, OR 97045 (503) 742-5430 NUnck@clackamas.us

AMEND Recitals #2:

WHEREAS, COUNTY holds an Intergovernmental Agreement ("IGA") for the Financing of Community Mental Health, Addiction Treatment, Recovery & Prevention, and Problem Gambling Services (Agreement No. 159159) with the State of Oregon acting by and through its Oregon Health Authority ("OHA") for the biennium term of 2019-2021;

TO READ:

WHEREAS, COUNTY holds *Intergovernmental Agreements (collectively the "IGA")* for the Financing of Community Mental Health, Addiction Treatment, Recovery & Prevention, and Problem Gambling Services (Agreement No. 159159 **and 166036**) with the State of Oregon acting by and through its Oregon Health Authority ("OHA") for the biennium term of 2019-2021;

AMEND Section 1 of the Agreement:

1. **Term and Effective Date.** Pursuant to the terms of the grant award, this Agreement shall be effective **July 1, 2019** and shall expire on **June 30, 2021**, unless sooner terminated or extended pursuant to the terms hereof.

TO READ:

1. **Term and Effective Date.** Pursuant to the terms of the grant award, this Agreement shall be effective **July 1, 2019** and shall expire on **September 30, 2021**, unless sooner terminated or extended pursuant to the terms hereof.

AMEND Section 3 of the Agreement:

3. **Standards of Performance.** SUBRECIPIENT shall perform all activities and programs in accordance with the requirements set forth in this Agreement and all applicable laws and regulations. Furthermore, SUBRECIPIENT shall comply with the requirements of the Community Mental Health Program ("CMHP") IGA No. 159159 awarded on June 26, 2019 which is/are the source of the grant funding, in addition to compliance with requirements of Title 42 of the *Code of Federal Regulations* ("CFR"), Part 6A, Sub-Part II & III. A copy of the relevant sections of that grant award have been provided to SUBRECIPIENT by COUNTY, which are attached to and made a part of this Agreement by reference. SUBRECIPIENT shall further comply with any requirements required by U.S. Department of Health and Human Services, 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.

TO READ:

3. **Standards of Performance.** SUBRECIPIENT shall perform all activities and programs in accordance with the requirements set forth in this Agreement and all applicable laws and regulations. Furthermore, SUBRECIPIENT shall comply with the requirements of the Community Mental Health Program ("CMHP") IGA No. 159159 awarded on June 26, 2019 **and IGA No. 166036 awarded on May 25, 2021**, which is/are the source of the grant funding, in addition to compliance with requirements of Title 42 of the *Code of Federal Regulations* ("CFR"), Part 6A, Sub-Part II & III. A copy of the relevant sections of that grant award have been provided to SUBRECIPIENT by COUNTY, which are attached to and made a part of this Agreement by reference. SUBRECIPIENT shall further comply with any requirements required by U.S. Department of Health and Human Services, 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.

AMEND Section 4 of the Agreement:

4. **Grant Funds.** COUNTY's funding for this Agreement is the 2019-2021 Intergovernmental Agreement for the Financing of Community Mental Health, Addiction Treatment, Recovery & Prevention, and Program Gambling Services (Agreement No. 159159). The maximum, not to exceed, grant amount COUNTY will pay is **\$599,772.53**. This is a cost reimbursement grant and disbursements will be made in accordance with the schedule and requirements contained in **Exhibit D: Required Financial Reporting and Reimbursement Request** and **Exhibit E: Performance Reporting**. Failure to comply with the terms of this Agreement may result in withholding of payment. Funding for this Agreement is from the following sources:
- 4.1. **Federal Funds: \$586,307.52** in federal funds are provided through the Intergovernmental Agreement for the Financing of Community Mental Health, Addiction Treatment, Recovery & Prevention, and Problem Gambling Services (Agreement No. 159159) (**CFDA 93.959**) issued to COUNTY by the State of Oregon acting by and through its OHA. The State of Oregon receives funds through the Substance Abuse, Prevention, and Treatment ("SAPT") Block Grant from the U.S. Department of Health and Human Services, Office of Substance Abuse and Mental Health Services Administration.
- 4.2. **Other Funds: \$13,465.01** in State funds are provided for funding of other items in the program budget.

TO READ:

4. **Grant Funds.** COUNTY's funding for this Agreement **are the 2019-2021 Intergovernmental Agreements** for the Financing of Community Mental Health, Addiction Treatment, Recovery & Prevention, and Program Gambling Services (Agreement No. 159159 **and 166036**). The maximum, not to exceed, grant amount COUNTY will pay is **\$599,772.53**. This is a cost reimbursement grant and disbursements will be made in accordance with the schedule and requirements contained in **Exhibit D: Required Financial Reporting and Reimbursement Request** and **Exhibit E: Performance Reporting**. Failure to comply with the terms of this Agreement may result in withholding of payment. Funding for this Agreement is from the following sources:

4.1. **Federal Funds:** **\$586,307.52** in federal funds are provided through the Intergovernmental **Agreements** for the Financing of Community Mental Health, Addiction Treatment, Recovery & Prevention, and Problem Gambling Services (Agreement No. 159159 **and 166036**) (CFDA 93.959) issued to COUNTY by the State of Oregon acting by and through its OHA. The State of Oregon receives funds through the Substance Abuse, Prevention, and Treatment ("SAPT") Block Grant from the U.S. Department of Health and Human Services, Office of Substance Abuse and Mental Health Services Administration.

4.2. **Other Funds:** **\$13,465.01** in State funds are provided for funding of other items in the program budget.

REPLACE SECTION 9.b. (Administrative Requirements: Personnel) with:

- b) **Change in Key Personnel.** SUBRECIPIENT is required to notify COUNTY, in writing, whenever there is a change in SUBRECIPIENT key administrative or programmatic personnel and the reason for the change. Key personnel include but are not limited to: Executive Director, Finance Director, Program Manager, Bookkeeper, or any equivalent to these positions within the organization.

AMEND Section 2 of Exhibit D, Required Financial Reporting and Reimbursement Request:

- 2. Requests for reimbursement shall be submitted by the **15th of the month** for the previous month. The final request for reimbursement shall be submitted by July 15, 2021 for June 30, 2021 expenses.

TO READ:

- 2. Requests for reimbursement shall be submitted by the **15th of the month** for the previous month. The final request for reimbursement shall be submitted by **October 15, 2021 for September 30, 2021 expenses**.

AMEND Section A of Exhibit E, Performance Reporting:

- A. In addition to **Section 4, Reporting Requirements of Exhibit H, CMHP Required Provider Agreement Provisions** and **Section 2, Performance Requirements of Exhibit I, CMHP Service Element**, Subrecipient shall submit reports every six (6) months. Reports shall be submitted to COUNTY no later than twenty (20) days following the end of the reporting period. SUBRECIPIENT shall submit Performance Reports per the following schedule:

Reporting Period	Report Due
July 1 – December 31, 2019	No later than January 20, 2020
January 1 – June 30, 2020	No later than July 20, 2020
July 1 – December 31, 2020	No later than January 20, 2021
January 1 – June 30, 2021	No later than July 20, 2021

Reports shall include:

- Number of individuals who have stayed in the program
- Number of individuals clean and sober
- Number of individuals who have not entered into criminal activity
- Number of individuals who have remained housed
- Number of individuals who have connected with entitlements
- Number of individuals who have found employment and/or increased their income.

TO READ:

B. In addition to **Section 4, Reporting Requirements of Exhibit H, CMHP Required Provider Agreement Provisions** and **Section 2, Performance Requirements of Exhibit I, CMHP Service Element**, Reports shall be submitted to COUNTY no later than twenty (20) days following the end of the reporting period. SUBRECIPIENT shall submit Performance Reports per the following schedule:

Reporting Period	Report Due
July 1 – December 31, 2019	No later than January 20, 2020
January 1 – June 30, 2020	No later than July 20, 2020
July 1 – December 31, 2020	No later than January 20, 2021
January 1 – June 30, 2021	No later than July 20, 2021
<i>July 1 – September 30, 2021</i>	<i>No later than October 20, 2021</i>

Reports shall include:

- Number of individuals who have stayed in the program
- Number of individuals clean and sober
- Number of individuals who have not entered into criminal activity
- Number of individuals who have remained housed
- Number of individuals who have connected with entitlements
- Number of individuals who have found employment and/or increased their income.

AMEND Section E of Exhibit E, Performance Reporting:

E. SUBRECIPIENT must submit a final Performance Report no later than **July 20, 2021**.

TO READ:

E. SUBRECIPIENT must submit a final Performance Report no later than **October 20, 2021**.

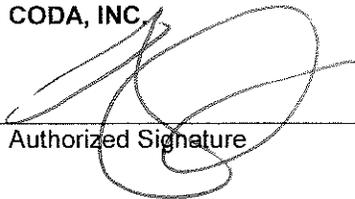
[Signature page follows]

SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have caused this Amendment #1 to be executed by their duly authorized officers.

CODA, INC.

COUNTY OF CLACKAMAS

 7.26.21
Authorized Signature Date

Tootie Smith, Chair Date
Board of County Commissioners

Alison Noice / Executive Director

Name / Title (Printed)

Approved as to form:
 08/09/2021

County Counsel Date

September 16, 2021

Board of County of Commissioners
Clackamas County

Members of the Board:

Approval of Amendment #2 to the Subrecipient Agreement with
Clackamas County Children’s Commission (CCCC) for Rapid Rehousing Services

Purpose/ Outcome	The special Emergency Solutions Grant COVID (ESG CV2) program, as authorized by the Coronavirus Aid, Relief, and Economic Securities Act (CARE Act). Special funding is to be used as a direct response to the COVID pandemic and its impacts on individuals and families.
Dollar Amount and Fiscal Impact	Emergency Solutions Grant (ESG CV2) funds budget increase of \$150,000 for a new total of \$243,500 as a grant.
Funding Source	U.S. Department of Housing and Urban Development ESG CARES Act funds No County General Funds are included in this Agreement
Duration	Upon signature to June 30, 2022
Previous Board Action/ Review	Previous Board Action on February 9, 2021. Agenda item 021821 A5.
Strategic Plan Alignment	Increase self-sufficiency for our clients. Ensure safe, healthy and secure communities.
County Review	The Subrecipient Agreement was reviewed and approved by County Counsel AN on July 29, 2021.
Procurement Review	1. Was the item processed through Procurement? yes <input type="checkbox"/> no <input checked="" type="checkbox"/> 2. Item is a Subrecipient Agreement that was processed through Finance Grant Management
Contact Person	Mark Sirois, Manager - Community Development: 503-655-8359
Contract No.	Subrecipient Agreement 21-014.A2 (H3S #10031_02)

BACKGROUND: The Community Development Division of the Health, Housing and Human Services Department requests the approval of Amendment #2 to the Subrecipient Agreement with Clackamas County Children’s Commission (CCCC) for rent assistance through the Rapid Rehousing (RRH) program to prevent, prepare for, and respond to the coronavirus pandemic (COVID 19) in Clackamas County. In October of 2020 CCCC applied for special Emergency Solutions Grant (ESG CV2) funding to provide eligible Rapid Rehousing assistance as needed.

PROJECT OVERVIEW: CCCC will provide staffing, safety planning, crisis intervention, counseling, and referral services as requested to families for the purpose of additional homeless assistance and homelessness prevention activities to mitigate the impacts of COVID-19. CCCC will provide RRH services to individuals and families who are receiving homelessness assistance.

It is expected that the funding under this ESG CV2 contract will assist approximately 25 homeless families with RRH services during the program year. With this amendment, CCCC has added approximately 15 clients to their existing caseload to ensure active participants in the Rapid Rehousing program can successfully transition from hotel room shelter beds to apartments.

Healthy Families. Strong Communities.

RECOMMENDATION: We recommend the approval of this amendment to the Subrecipient Agreement.

Respectfully submitted,

A handwritten signature in black ink that reads "Mary A. Rumbaugh". The signature is written in a cursive style with a large initial 'M' and a long, sweeping tail on the 'h'.

For Rodney A. Cook
Rodney Cook, Interim Director
Health, Housing, and Human Services

TO READ:

4. Grant Funds. COUNTY's funding for this Agreement is the Emergency Solutions Grant (Catalogue of Federal Domestic Assistance [CFDA] #: 14.231) issued to COUNTY by the U.S. Department of Housing and Urban Development, Office of Community Planning and Development (Federal Award Identification # E20-UW-41-0001). The maximum, not to exceed, grant amount COUNTY will pay is \$243,500. This is a cost reimbursement grant and disbursements will be made in accordance with the schedule and requirements contained in Exhibit D: Required Financial Reporting and Reimbursement Request. Failure to comply with the terms of this Agreement may result in withholding of payment.

REPLACE:

EXHIBIT B
SUBRECIPIENT PROGRAM BUDGET

- A. The total compensation under this contract shall not exceed \$93,500 with payments to be made as outlined in the body of the contract.
- B. Adjustments to the budget may only be made with the approval of both Parties.

Rapid Rehousing

Program Costs	Total Budget Amount	Total ESG Amount	Source of Funds
RRH Staffing Costs (.25 FTE FA and .25 FTE MH)		32,000	ESG
Transportation		1,000	ESG
Rent Assistance		52,000	ESG
Administration		8,500	ESG
Total Expenses			
Total ESG CV2:		93,500	

WITH:

EXHIBIT B
SUBRECIPIENT PROGRAM BUDGET

- A. The total compensation under this contract shall not exceed \$ 243,500 with payments to be made as outlined in the body of the contract.
- B. Adjustments to the budget may only be made with the approval of both Parties.
- C. Rapid Rehousing**

Program Costs	Total Budget Amount	Total ESG Amount	Source of Funds
RRH Staffing Costs		82,000	
(.25 FTE FA and .25 FTE MH)			ESG & Other
Transportation		1,000	ESG & Other
Rent Assistance		136,150	ESG & Other
			ESG & Other
Administration		24,350	Other
Total Expenses			
Total ESG CV2:		243,500	

[Signature page follows]

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

CLACKAMAS COUNTY CHILDREN'S COMMISSION

By: *Darcee Kilsdonk*
Darcee Kilsdonk, Executive Director

Date
16518 SE River Road
Street Address
Milwaukie, Oregon 97267
City/State/Zip
darceek@cccchs.org
Email

CLACKAMAS COUNTY

Commissioner: Tootie Smith, Chair
Commissioner: Sonya Fischer
Commissioner: Paul Savas
Commissioner: Martha Schrader
Commissioner: Mark Shull

Signing for the Board:

Tootie Smith, Chair

Date

September 16, 2021

Board of County of Commissioners
Clackamas County

Members of the Board:

Approval of Amendment #1 to the Subrecipient Agreement with
Northwest Family Services (NWFS)

Purpose/ Outcome	The special Emergency Solutions Grant COVID (ESG CV2) program, as authorized by the Coronavirus Aid, Relief, and Economic Securities Act (CARE Act). Special funding is to be used as a direct response to the COVID pandemic and its impacts on individuals and families.
Dollar Amount and Fiscal Impact	Emergency Solutions Grant (ESG CV2) funds budget increase of \$300,000 for a new total of \$657,500 as a grant.
Funding Source	U.S. Department of Housing and Urban Development ESG CARES Act funds No County General Funds are included in this Agreement
Duration	July 1, 2021 to November 30, 2021
Previous Board Action/ Review	Previous Board Action on July 16, 2020. Agenda item 07162020 A7.
Strategic Plan Alignment	Increase self-sufficiency for our clients. Ensure safe, healthy and secure communities.
County Review	The Subrecipient Agreement was reviewed and approved by County Counsel AN on July 27, 2021.
Procurement Review	1. Was the item processed through Procurement? yes <input type="checkbox"/> no <input checked="" type="checkbox"/> 2. Item is a Subrecipient Agreement that was processed through Finance Grant Management
Contact Person	Mark Sirois, Manager - Community Development: 503-655-8359
Contract No.	Subrecipient Agreement 21-015.A1 (H3S #10011_01)

BACKGROUND: The Community Development Division of the Health, Housing and Human Services Department requests the approval of Amendment #1 to the Subrecipient Agreement with Northwest Family Services (NWFS) for homeless shelter services and rent assistance to prevent, prepare for, and respond to the coronavirus pandemic (COVID 19) in Clackamas County. In October of 2020 NWFS applied for special Emergency Solutions Grant (ESG CV2) funding to provide eligible operating and shelter services and Rapid Rehousing assistance as needed.

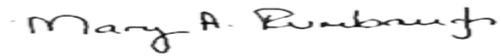
PROJECT OVERVIEW: NWFS will provide staffing, operation, food, rent assistance and transportation services as requested for the purpose of providing homeless shelter services to individuals and families to prevent exposure and to mitigate the impacts of COVID-19.

It is expected that the funding under this ESG CV2 agreement will assist approximately 60 homeless families with shelter services and Rapid Rehousing during the program year. With this amendment, NWFS has added approximately 45 more clients to their existing caseload to ensure active participants in the Rapid Rehousing program can successfully transition from hotel room shelter beds to apartments.

Healthy Families. Strong Communities.

RECOMMENDATION: We recommend the approval of this amendment to the Subrecipient Agreement.

Respectfully submitted,

A handwritten signature in cursive script that reads "Mary A. Rumbaugh".

For Rodney A. Cook
Rodney Cook, Interim Director
Health, Housing, and Human Services

AMEND:

EXHIBIT B
 SUBRECIPIENT PROGRAM BUDGET

- A. The total compensation under this contract shall not exceed \$ 357,500 with payments to be made as outlined in the body of the contract.
- B. Adjustments to the budget may only be made with the approval of both Parties.

Shelters

Program Costs	Total Budget Amount	Total ESG Amount	Source of Funds
Shelter Staffing Costs		81,761	
Shelter utilities		10,000	ESG & Other
Shelter rent			ESG & Other
Shelter supplies		5,000	ESG & Other
Transportation		3,239	ESG & Other
Administration		10,000	Other
Total Expenses			
Shelters Total ESG CV2:		110,000	

Rapid Rehousing

Program Costs	Total Budget Amount	Total ESG Amount	Source of Funds
RRH Staffing Costs		91,503	
Program supplies, phones		1,200	ESG & Other
Transportation		2,297	ESG & Other
Rent Assistance		140,000	ESG & Other
Administration		22,500	Other
Total Expenses			
Total ESG CV2:		247,500	

TO READ:

**EXHIBIT B
 SUBRECIPIENT PROGRAM BUDGET**

- A. The total compensation under this contract shall not exceed \$ 657,500 with payments to be made as outlined in the body of the contract.
- B. Adjustments to the budget may only be made with the approval of both Parties.

Shelters

Program Costs	Total Budget Amount	Total ESG Amount	Source of Funds
Shelter Staffing Costs		81,761	
Shelter utilities		10,000	ESG & Other
Shelter rent			ESG & Other
Shelter supplies		5,000	ESG & Other
Transportation		3,239	ESG & Other
Administration		10,000	Other
Total Expenses			
Shelters Total ESG CV2:		110,000	

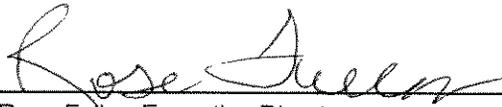
Rapid Rehousing

Program Costs	Total Budget Amount	Total ESG Amount	Source of Funds
RRH Staffing Costs		160,000	
Program supplies, phones		1,800	ESG & Other
Transportation		8,123	ESG & Other
Rent Assistance		417,577	ESG & Other
Administration		60,000	Other
Total Expenses			
Total ESG CV2:		647,500	

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment #1 to be executed by their duly authorized officers.

NORTHWEST FAMILY SERVICES

By: 
Rose Fuller, Executive Director

7/28 (2021)
Date
6200 SE King Road
Street Address
Portland, Oregon 97222
City/State/Zip
rfuller@nwfs.org
Email

CLACKAMAS COUNTY

Commissioner: Tootie Smith, Chair
Commissioner: Sonya Fischer
Commissioner: Paul Savas
Commissioner: Martha Schrader
Commissioner: Mark Shull

Signing for the Board:

Tootie Smith, Chair

Date

September 16, 2021

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Change Order #5 between Clackamas County and
Ankrom Moisan Associated Architect, Inc. for the Sandy Health Clinic Project

Purpose/ Outcome	Change Order #5 will allow for continued services with Ankrom Moisan Associated Architects, Inc. to design medical and dental space for a new health center in Sandy.
Dollar Amount and Fiscal Impact	Original Ankrom Moisan Contract Amount:.....\$190,700 Change Order No.1-H3S Approved for Zoning Change:.....\$ 18,113 (9.5%) Change Order No.2-BCC Approved Land Use Issues:.....\$ 43,955 (32%) Change Order No.3-BCC Approved Design Review Costs:.....\$ 23,483 (44.9%) Change Order No.4-BCC Approved Geotech and Design Work.\$ 6,350 (48.2%) <u>Change Order No.5-BCC Pending Geotech Design Coord.....\$ 10,650 (53.8%)</u> New Ankrom Moisan Contract Total:.....\$293,251 No County General Funds will be used for this project.
Funding Source	Health Centers - Fund Balance
Duration	August 15, 2019 through March 15, 2022.
Previous Board Action/ Review	The BCC approved Ankrom Moisan Architects Contract on August 15, 2019. The BCC approved Change Order #4 on February 25, 2021.
Strategic Plan Alignment	1. Ensure safe, healthy and sustainable communities. 2. Improved community safety and health.
Counsel Review	The Professional Services Contract was reviewed and approved by County Counsel 1. August 5, 2019 2. AN
Procurement Review	1. Was the item processed through Procurement? No 2. RFP and Professional Services Contract was obtained from Procurement.
Contact Person(s)	Deborah Cockrell – Health Centers: 503-756-9674
Contract No.	H3S 9429

BACKGROUND: The Health Centers Division of the Health, Housing and Human Services Department requests the approval of this Change Order #5 regarding the Professional Services Contract with Ankrom Moisan Architects, Inc. Their contract to include: redevelopment of the existing building (6,700 sf) work with the City of Sandy to redesign the site with a new building (8,500 sf) that is larger for County services, start and complete zoning and planning requirements of Sandy, and respond to construction questions for the County and General Contractor. The new address is 39740 Pleasant Street, Sandy, Oregon 97055. The building will be used for Primary Care, Dental Care, Behavioral Health Clinic and provide Pharmacy Services.

Change Order #5 was generated by three factors. 1) Banlin Construction requested review of the existing soil that would surround the new building, before starting the structural footings, so Redmond Geotechnical Services evaluated the site and determined 18 inches of unusable soil needed to be removed. 2) Banlin

September 19, 2021

Construction requested updated drawings and elevations for the site drainage and trash enclosure be provided by AAI Structural Engineers. 3) Ankrom Moisan had to coordinate each factor of Change Order #5 for the County and Banlin Construction. The County will need to extend the Professional Services Contract with Ankrom Moisan Architects until March 15, 2022 to completion of the Sandy Health Center Project. Therefore, County Staff has reviewed the additional costs and support this Change Order for \$10,650 dollars. This Change Order is an increase of (5.6%) to the total Ankrom Moisan Professional Services Contract.

PROJECT OVERVIEW: The Board of County Commissioners (BCC) approved the purchase of this building at the April 16, 2019 business meeting. The County closed on the property on August 22, 2019. Ankrom Moisan was selected through a competitive RFP process and the BCC approved their Professional Services Contract August 15, 2019. Their services are to redesign the existing structure, contract administration, project management, supervise the structural engineer and construction oversight. County Staff will work closely with Ankrom Moisan on all issue of the project. This project was publicly bid until May 6, 2021, and Banlin Construction, LLC was the lowest responsive bidder. Site work began June 29, 2021.

RECOMMENDATION: We recommend the approval of this Amendment to the Professional Service Contract via Change Order #5 with Ankrom Moisan. Staff recommends the Board approval of this agreement and authorizes Tootie Smith, Board Chair; or her designee, to sign on behalf of Clackamas County.

Respectfully submitted,



For Rodney A. Cook

Rodney A. Cook, Interim Director
Health, Housing and Human Services

CHANGE ORDER FORM

Ankrom Moisan, LLC
38 NW Davis Street, Suite 300
Portland, OR 97209

Com. Dev. / Health Ctrs.
 Ankrom Moisan
 H3S Admin Office

Project Name: Design of Sandy Health Clinic
Project Address: 39740 Pleasant Street (*New Address*)
Sandy, OR 97055

Change Order No.: **5**
Contract Date: **8/19/2019**
Change Order Date: **8/3/21**
End of Contract: **3/15/2022**

To: Clackamas County Com. Dev. / Health Ctrs.
2051 Kaen Road, Suite #245
Oregon City, Oregon 97045

H3S Database Contract No.:
9429

The following change(s) have been authorized by Clackamas County Health Centers. *See the attached letter provided by Ankrom Moisan Architects showing the schedule of fees associated with increceases to their existing Professional Services Contract with Clackamas County H3S-Health Centers. These items 1, 2 and 3 are deemed as necessary and vital for the Sandy Clinic Project, known as Change Order No. 5.*

1. Ankrom Moisan Architects/ Redmond Getech. Eng. Topsoil Evaluation.....	\$ 2,000.00
2. Ankrom Moisan Architects/ AAI Structural Engineering of Evaluations.....	\$ 5,650.00
<u>3. Ankrom Moisan Architects/ Design Document Coordination with AAI Engs...</u>	<u>\$ 3,000.00</u>
Total Additional Fees to the Ankrom Moisan Architects Contract.....	\$ 10,650.00

Attached supporting documentation (letters and email).

Original Contract Price	\$190,700.00
Net Change by Previous Change Order(s) No.1, 2, 3 & 4.....	\$ 91,901.00
Contract Price prior to this Change Order	\$282,601.00
Contract Price will be (increased) (unchanged) by Change Order No. 5	\$ 10,650.00
The new Contract Price including this Change Order will be	\$293,251.00

The Contract Time will be increased by this Change Order (0) months. The date of Final Completion of this Contract is (**March 15, 2022**), set by Change Order No.4.

[Signature Page Follows]

Approved:

by:  08.03.2021
Lori Kellow, Project Architect (date)
Ankrom Moisan Architects

Approved:

by:  8.4.2021
Deborah Cockrell, FQHC (date)
Clackamas County Health Centers

Approved:

by:  8/5/2021
Steve Kelly, Project Coordinator (date)
Clackamas County Com. Dev. &
Health Centers

Approved:

by: _____
Tootie Smith, Chair (date)
Board of County Commissioners



July 22, 2021

Mr. Steve Kelly, Project Coordinator
Clackamas County Community Development Division
2051 Kaen Rd. Suite 245
Oregon City, OR 97045

**RE: CLACKAMAS COUNTY - SANDY HEALTH CLINIC
ADD SERVICES FEE PROPOSAL**

Dear Steve:

Thank you for this opportunity to submit a proposal for additional services for the Sandy Health Clinic. This request is to cover the additional services for:

- Geotechnical Monitoring services and engineering for onsite observation
- Structural engineering for Trash enclosure, sign monument and ADA ramp
- Architectural detail revisions for Trash enclosure, monument, and ramp and revision to the permit coordination with the City of Sandy

Redmond Geotechnical Engineering	\$ 2,000
AAI Structural Engineering	\$ 5,650
<u>AM Design Document Coordination</u>	<u>\$ 3,000</u>

Total Add Fees \$ 10,650

Let us know if you have any questions regarding this request for additional fees.

Sincerely,
ANKROM MOISAN ARCHITECTS

Lori Kellow, AIA | Architect
Principal

ARCHITECTURE
INTERIORS
URBAN DESIGN
BRANDING

Ankrom Moisan Architects

PORTLAND
55 NW Davis Street
Suite 300
Portland, OR 97209
503.253.1100

SEATTLE
505 9th Avenue
Suite 300
Seattle, WA 98101
206.375.6000

SAN FRANCISCO
1014 Howard Street
San Francisco, CA 94103
415.774.1000

ankrommoisan.com

Kelly, Steve

From: Cockrell, Deborah
Sent: Monday, July 26, 2021 2:50 PM
To: Kelly, Steve
Subject: RE: Sandy Clinic Add Services Proposal #5

Approved

Thanks Steve

From: Kelly, Steve <SteveKel@clackamas.us>
Sent: Monday, July 26, 2021 2:27 PM
To: Cockrell, Deborah <DCockrell@clackamas.us>
Subject: FW: Sandy Clinic Add Services Proposal #5
Importance: High

Deborah,

I have called Lori Kellow back to make sure she could explain these 3 expenditures (costs) to be added to their Ankrom Moisan Architects Contract.

Thanks for coming to CD to talk face to face about these costs.

ITEM #1: (Redmond Geo-tech.) \$2,000/ I know this add is legitimate. That was to determine the unusable soil issue recently (July 2021). AMA is carrying their contract for us. It is saving us time. I actually spoke to Dan Redmond about this cost about 8-10 days ago. He didn't care who carried this cost, and said over the phone it would be \$1,700-\$2,000 dollars when all said and done.

ITEM #2 HAS TWO PARTS: (AAI Structural Engineering) \$5,650/ PART ONE: I will ask Lori about why the Trash Enclosure is an issue now. The drawing and detail was very basic. Banlin is requesting more information, because this Trash Enclosure is more robust than normal. So, the Trash Enclosure needs improved drawings for safe to make sure it is built right. The original design was not helpful. The City approved the drawings as submitted. A bit strange. PART TWO: On-Site Drainage redesign to lower Pipe at least 1 foot...at NW Corner of Ten Eyck and Pleasant Street to the Right-Of-Way, is the issue from my email to AMA about them working with AAI Engineers.

ITEM #3 (Ankrom Moisan Design Doc. Coordination) \$3,000/ AM Design Documents Coordination is directly related to Item #2 above.

Please approve these three items as for I did receive clarification from Lori Kellow, thanks for your valuable time.

Steve Kelly, Project Coordinator

(Pronouns: He/Him/His)

[Why pronouns matter](#)

Clackamas County Community Development Division
2051 Kaen Road, Suite 245

September 16, 2021

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Intergovernmental Agreement with Oregon Health and Sciences University for
Emergency Medical Services

Purpose/Outcomes	To provide Medical Online Direction; Trauma Communication Coordination; Central Data Collection
Dollar Amount and Fiscal Impact	The maximum Agreement value is \$111,213.
Funding Source	Ambulance Service Franchise Fees
Duration	Effective upon execution of contract #10130 and terminates on June 30, 2024.
Previous Board Action	No Previous Board Actions have been taken.
Strategic Plan Alignment	1. Improved Community Safety and Health 2. Ensure safe, healthy and secure communities
Counsel Review	<i>Date of County Counsel Review: June 24, 2021</i> <i>Initials of County Counsel performing Review: KR</i>
Procurement Review	1. Was the item processed through Procurement? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If no, explain: This item is an IGA
Contact Person	Philip Mason-Joyner, Public Health Director – 503-742-5956
Contract No.	10130

BACKGROUND:

Clackamas County Emergency Medical Services (EMS) Program contracts with OHSU in order for local first responders to access clinical expertise on complex 911 medical calls 24/7. OHSU serves as the “regional” hospital for this area and provides these services across multiple counties in coordination with hospitals and health systems. OHSU helps with communicating and preparing hospitals when a significant medical trauma occurs requiring rapid response AND collects this data for all parties in order to inform quality improvement activities across these systems. This contract is funded through the use of the ambulance franchise fee. No general funds involved.

This Agreement has a maximum value of \$111,213. This Agreement is effective upon signature and continues through June 30, 2024.

RECOMMENDATION:

Staff recommends the Board of County Commissioners approve this Agreement.

Respectfully submitted,



For Rodney A. Cook
Rodney A. Cook, Interim Director
Health, Housing, and Human Services

Contract Transmittal Form

Health, Housing & Human Services Department

H3S Contract #: 10130	Division: PH	<input type="checkbox"/> Subrecipient
Board Order #:	Contact: Webb, Karen	<input type="checkbox"/> Revenue
	Program Contact:	<input type="checkbox"/> Amend # \$
	Mason, Philip	<input type="checkbox"/> Procurement Verified
		<input type="checkbox"/> Aggregate Total Verified

Non BCC Item BCC Agenda **Date:** Thursday, July 29, 2021

CONTRACT WITH: Oregon Health & Science University

CONTRACT AMOUNT: \$111,213.00

TYPE OF CONTRACT

<input type="checkbox"/> Agency Service Contract	<input type="checkbox"/> Memo of Understanding/Agreement
<input type="checkbox"/> Construction Agreement	<input type="checkbox"/> Professional, Technical & Personal Services
<input checked="" type="checkbox"/> Intergovernmental Agreement	<input type="checkbox"/> Property/Rental/Lease
<input type="checkbox"/> Interagency Services Agreement	<input type="checkbox"/> One Off

DATE RANGE

<input type="checkbox"/> Full Fiscal Year _____ - _____	<input type="checkbox"/> 4 or 5 Year _____ - _____
<input type="checkbox"/> Upon Signature _____ - _____	<input type="checkbox"/> Biennium _____ - _____
<input type="checkbox"/> Other _____ - _____	<input checked="" type="checkbox"/> Retroactive Request? 07/01/2021 - 06/30/2024

INSURANCE What insurance language is required?

Checked Off N/A

Commercial General Liability: Yes No, not applicable No, waived
If no, explain why:

Business Automobile Liability: Yes No, not applicable No, waived
If no, explain why:

Professional Liability: Yes No, not applicable No, waived
If no, explain why:

Approved by Risk Mgr _____
Risk Mgr's Initials and Date

BOILER PLATE CHANGE

Has contract boilerplate language been altered, added, or deleted?

No Yes (must have CC approval-next box) N/A (Not a County boilerplate - must have CC approval)

If yes, what language has been altered, added, or deleted and why: _____

COUNTY COUNSEL

Yes by: Rastetter, Kathleen Date Approved: Thursday, June 24, 2021
OR
 This contract is in the format approved by County Counsel.

SIGNATURE OF DIVISION REPRESENTATIVE: Sherry L. Olson Digitally signed by Sherry L. Olson
Date: 2021.07.06 08:21:25 -07'00'

Date: _____

H3S Admin Only	Date Received: _____
	Date Signed: _____
	Date Sent: _____

AGREEMENTS/CONTRACTS

X	New Agreement/Contract
	Amendment/Change Order Original Number _____

ORIGINATING COUNTY

DEPARTMENT: **Health, Housing Human Services**
Public Health

PURCHASING FOR: **Contracted Services** _____

OTHER PARTY TO

CONTRACT/AGREEMENT: **Oregon Health & Science University** _____

BOARD AGENDA ITEM

NUMBER/DATE: _____ DATE: **07/29/2021** _____

PURPOSE OF

CONTRACT/AGREEMENT: **Emergency Medical Services.**

H3S CONTRACT NUMBER: **10130** _____

**INTERGOVERNMENTAL AGREEMENT
BETWEEN
CLACKAMAS COUNTY
AND
OREGON HEALTH AND SCIENCES UNIVERSITY
Contract # 10130**

THIS AGREEMENT (this "Agreement") is entered into and between Clackamas County, a political subdivision of the State of Oregon, and Oregon Health and Sciences University ("OHSU"), 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.

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 upon execution, and shall expire upon the completion of each and every obligation of the Parties set forth herein, or December 31, 2024, whichever is sooner.
2. **Scope of Work.** OHSU agrees to provide the services further identified in the Scope of Work attached hereto as Exhibit A and incorporated herein ("Work").
3. **Consideration.** Clackamas County Public Health agrees to pay OHSU, from available and authorized funds, a sum not to exceed thirty five thousand, nine hundred and eighty one dollars (\$35,981) for the first year, with 3 % increase per year, for accomplishing the Work required by this Agreement.
4. **Payment.**

A. Payment for services will be as follows:

The parties agree to increase the payment provided to OHSU for services provided under this agreement by three percent per year beginning June 30, 2021. The compensation rate for this agreement shall be as follows:

July 1, 2021-June 30th 2022: \$35,981 per year
July 1, 2022-June 30th 2023: \$37,060 per year
July 1, 2023-June 30th 2024: \$38,172 per year

- B. OHSU will send invoices within 180 days of the date of service to:
 - Clackamas County
 - Public Services Building
 - Attn: Jenyfer Smith
 - 2051 Kaen Road
 - Oregon City, OR 97045
 - (503) 742-5945

- C. COUNTY will reimburse OHSU quarterly upon receipt of an invoice and make checks payable to "OHSU" and mail to:
 - Oregon Health & Science University Attn: Cashier's Office
 - Mail Code: L002
 - 3181 SW Sam Jackson Park Road Portland, OR
 - 97201-3098

5. Representations and Warranties.

- A. *Agency Representations and Warranties*: OHSU represents and warrants to County that OHSU 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 OHSU enforceable in accordance with its terms.
- B. *County Representations and Warranties*: County represents and warrants to OHSU 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 OHSU may terminate this Agreement at any time upon thirty (30) days written notice to the other party.
- B. Either the County or OHSU 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 OHSU 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 County may terminate this Agreement in the event the County fails to receive expenditure authority sufficient to allow the County, in the exercise of its reasonable administrative discretion, to continue to perform under 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 County 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. OHSU 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 OHSU, its subcontractors, agents, or employees. OHSU agrees to indemnify, hold harmless and defend Clackamas 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 OHSU or the employees, subcontractors, or agents of OHSU.

However, neither OHSU nor any attorney engaged by OHSU shall defend the claim in the name of County or any department of County, nor purport to act as legal representative of County or any of its departments, without first receiving from the Clackamas County Counsel's Office authority to act as legal counsel for County, nor shall Agency settle any claim on behalf of County without the approval of the Clackamas County Counsel's Office. County may, at its election and expense, assume its own defense and settlement.

- 8. **Insurance.** OHSU 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, OHSU shall provide documentation to the County of its self-insured status by completing the Self-Insurance Certification form provided by the County.

The Parties agree to maintain levels of insurance, or self-insurance, sufficient to satisfy their obligations under this Agreement and all requirements under applicable law.

Oregon Health and Sciences University
Intergovernmental Agreement # 10130
Page 4 of 10

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. Public Health Division or their designee will act as liaison for the County.

County Contact Information:

Karen Webb
Contract Specialist
2051 Kaen Rd Ste 367
Oregon City, OR 97045
PHONE 503-742-5329
FAX 503-742-5352
Email: kwebb@clackamas.us

OHSU or their designee will act as liaison for OHSU, the Agency.

Contact Information:

OHSU DEPARTMENT

Mirjana Kasap Trifunovic, JD
Oregon Health & Science University Department Administrator
Department of Emergency Medicine
745 SW Gaines Road, Mail Code: CDWEM Portland, OR 97239
Phone: 503-494-4322
Email: kasaptri@ohsu.edu

OHSU CONTRACTING & NOTICES ADDRESS

Kelli Riggsbee, MHA
Managed Care Contracting
3181 SW Sam Jackson Park Road, Mail Code L326
Portland, OR 97239
Phone: 503-494-4147
Fax: 503-494-1293
Email: riggsbek@ohsu.edu

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 OHSU 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. OHSU, 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.** OHSU 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. OHSU 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, OHSU 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 County. The County 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, OHSU shall promptly deliver these materials to Clackamas County Public Health.

- F. **Hazard Communication.** OHSU 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, OHSU 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.** OHSU 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.** OHSU 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 OHSU 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.** OHSU 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 OHSU nor County shall be held responsible for delay or default caused by events outside of OHSU or County's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, OHSU 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.** OHSU 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 OHSU or its employees or agents in the performance of this Agreement shall be

Oregon Health and Sciences University
Intergovernmental Agreement # 10130
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deemed confidential information of the County (“Confidential Information”). OHSU agrees to hold Confidential Information in strict confidence, using at least the same degree of care that OHSU 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
Commissioner, Tootie Smith, Chair
Commissioner, Sonya Fischer
Commissioner, Paul Savas
Commissioner, Martha Schrader
Commissioner, Mark Shull

Oregon Health and Sciences University

Chair, Board of County Commissioners

Anthony R. Masciotra, Jr.

Anthony R Masciotra Jr. CEO
OHSU

Date

7/1/2021 | 7:10:21 PM PDT

Date

\\lion\CommunityHealthShare\Admin\CONTRACTS\PUBLIC HEALTH\Expense\Oregon Health & Science University (OHSU)\Emergency Medical Services\FY 21-22\Contract\H3SPHOregonHealthSciencesUniversity10130.docx

EXHIBIT A SCOPE OF WORK

A. CONSULTANT Responsibilities:

- i. **ONLINE MEDICAL DIRECTION.** OHSU shall furnish on-line medical direction and comply with the following performance indicators:
 1. Calls requesting on-line medical direction shall be answered by a physician within sixty (60) seconds at least ninety percent (90%) of the time.
 2. OHSU shall provide a process to assure that physicians are knowledgeable of the protocols. This process may include but not be limited to educational sessions, tests, and in-service training for protocol updates.
 3. OHSU shall develop a process for adoption of Standard Operating Procedures (SOPs) which govern online medical direction. OHSU shall adhere to the SOPs at all times.
 4. OHSU shall provide a plan, which details a problem-solving process for any complaint or issue presented to OHSU's Medical Resource Hospital (MRH) medical director or communications coordinator. This plan shall assure a compliant resolution which must be furnished to COUNTY no more than thirty (30) days from date of complaint filing.
 5. OHSU shall implement a quality assurance/quality improvement process, which reviews standards, operations, and performance, identifying problems and their solutions.
 6. OHSU shall participate in COUNTY's quality assurance process by providing a staff member, when requested, and by providing medical resource hospital data and information on a timely basis as requested by the Quality Assurance Subcommittee.
 7. OHSU will, through COUNTY, provide real-time EMS patient disposition management assistance in the setting of a mass-casualty incident (MCI). Management protocols will be compliant with County and ATAB I MSCI protocols.

- ii. **TRAUMA COMMUNICATIONS COORDINATION.** OHSU shall provide trauma communications coordination and comply with the following performance indicators. The trauma communications coordination function is being provided at the request of the Area Trauma Advisory Board (ATAB).
 1. Trauma communication coordination requests shall be answered within ten
 2. (10) seconds ninety percent (90%) of the time.
 3. OHSU shall develop a process for adoption of Standard Operating Procedures (SOPs) which govern trauma communications coordination. OHSU shall adhere to the SOPs at all times.
 4. OHSU shall provide a plan, which details a problem-solving process for any complaint. This plan shall assure a compliant resolution which must be furnished to COUNTY no more than thirty (30) days from date of complaint filing.

- iii. **CENTRAL DATA COLLECTION.** OHSU shall be responsible for central data

collection for on-line medical direction and trauma communication coordination activities. OHSU shall comply with the following performance indicators:

1. OHSU shall collect this data from emergency medical technicians when they contact OHSU for on-line medical direction or trauma communication coordination functions.
2. MRH calls shall be tape-recorded.
3. Voice tapes shall be retained for a period of not less than twelve (12) months.
4. OHSU shall also provide COUNTY with proof of accreditation by DNV GL Healthcare USA, Inc. on NIAHO Hospital Accreditation Program and proof that it meets or exceeds all requirements of MCC 6.31.060 (A-6) and rules adopted pursuant thereto.

B. COUNTY Responsibilities:

- i. COUNTY shall pay OHSU according to Section 3 of this agreement. This compensation is guaranteed through June 30, 2024. OHSU shall retain the right, upon sixty (60) days prior written notice to COUNTY, to adjust the compensation for each year thereafter. If the parties cannot mutually agree on a new compensation schedule, the Agreement may be terminated under the provisions hereof.

September 16, 2021

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of an Intergovernmental Agreement with the State of Oregon, acting by and through its Department of Human Services for Operation of Community Developmental Disability Services for Clackamas County

Purpose/Outcomes	This agreement provides the base funding for services to intellectual/developmental disabled children and adults residing in Clackamas County.
Dollar Amount and Fiscal Impact	The total agreement is \$22,225,085.
Funding Source	Federal Medicaid and State General Fund.
Duration	Effective July 1, 2021 and terminates on June 30, 2023
Previous Board Action	Previous biennium agreement was approved on July 11, 2019.
Strategic Plan Alignment	1. This funding aligns with the strategic priority to increase self-sufficiency for our clients. 2. This funding aligns with the strategic priority to ensure safe, healthy and secure communities by addressing needs of older adults in the community.
County Counsel	1. Date of Counsel review: 8/12/21 2. Initials of County Counsel performing review: KR
Procurement Review	1. Was this time processed through Procurement? No 2. If no, provide brief explanation: This is a IGA Grant agreement. Not subject to Procurement Review.
Contact Person	Brenda Durbin, Director, Social Services Division 503-655-8641
Contract No.	H3S #10287

BACKGROUND:

The Clackamas County Social Service Division of the Department of Health, Housing & Human Services requests the approval of an Intergovernmental Agreement with State of Oregon, Department of Human Services for operation of the Community Developmental Disability Services Program. Through this agreement, Clackamas County Developmental Disabilities Services Program will provide local administration services, case management services and abuse investigation services to Clackamas County residents.

This contract is effective July 1, 2021 and continues through June 30, 2023. This contract was reviewed and approved by County Counsel on August 12, 2021.

RECOMMENDATION:

Staff recommends the Board approval of this agreement and that Tootie Smith, Board Chair; or her designee, be authorized to sign on behalf of Clackamas County.

Respectfully submitted,

A handwritten signature in cursive script that reads "Mary A. Rumbaugh".

For Rodney A. Cook
Rodney A. Cook, Interim Director
Health Housing & Human Services



Agreement Number 169179

**STATE OF OREGON
INTERGOVERNMENTAL GRANT AGREEMENT
FOR THE FINANCING OF
COMMUNITY DEVELOPMENTAL DISABILITIES PROGRAM SERVICES**

In compliance with the Americans with Disabilities Act, this document is available in alternate formats such as Braille, large print, audio recordings, Web-based communications, and other electronic formats. To request an alternate format, please send an e-mail to dhs-oha.publicationrequest@state.or.us or call 503-378-3486 (voice) or 503-378-3523 (TTY) to arrange for the alternative format.

This Intergovernmental Grant Agreement for the financing of Community Developmental Disabilities Services (the “Agreement”) is between the State of Oregon, acting by and through its Oregon Department of Human Services, hereinafter referred to as “ODHS,” and Clackamas County, hereinafter referred to as “County” or “CDDP”.

The program to be supported under this Agreement relates principally to ODHS’

**Office of Developmental Disabilities Services (ODDS)
Administration
500 Summer Street NE E-09
Salem, Oregon 97301
Agreement Administrator: Lea Ann Stutheit or delegate
Telephone: (503) 945-6675
E-mail address: leaann.stutheit@dhsaha.state.or.us**

1. Effective Date and Duration.

This Agreement, when fully executed by every party, regardless of date of execution by every party, shall become effective on the date this Agreement has been approved by the Department of Justice, or **July 1, 2021**, whichever date is later. Unless extended or terminated earlier in accordance with its terms, this Agreement shall expire on **June 30, 2023**. Agreement termination shall not extinguish or prejudice ODHS’ right to enforce this Agreement with respect to any default by County that has not been cured.

2. Agreement Documents, Order of Precedence.

a. This Agreement includes the following listed exhibits and attachments which are incorporated into this Agreement:

- Exhibit A: Definitions
- Exhibit B Part 1: Operations and Administration Terms and Conditions;
- Exhibit B Part 2: Service Element Standards and Procedures;
- Exhibit B Part 3: Financial Terms and Conditions;
- Exhibit C: Special Terms and Conditions;
- Exhibit D: General Terms and Conditions;
- Exhibit E: Standard Terms and Conditions;
- Exhibit F: Federal Terms and Conditions;
- Exhibit G Part 1: Required Subcontractor Provisions;
- Exhibit G Part 2: Subcontractor Insurance Requirements;
- Exhibit H Part 1: Privacy and Security Agreement;
- Exhibit H Part 2: Third Party Information System Access Request;
- Attachment #1: Days and Hours of Operation;
- Attachment #2: Subcontractor Disclosures Report.

This Agreement constitutes the entire agreement between the parties on the subject matter in it. There are no understandings, agreements, or representations, oral or written, regarding this Agreement that are not specified herein.

b. In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence shall control. The precedence of the documents comprising this Agreement is as follows, the documents being listed from highest precedence to lowest precedence.

- (1) This Agreement without exhibits;
- (2) Exhibit F: Federal Terms and Conditions;
- (3) Exhibit H Part 1: Privacy and Security Agreement;
- (4) Exhibit H Part 2: Third Party Information System Access Request;
- (5) Exhibit E: Standard Terms and Conditions;
- (6) Exhibit A: Definitions;
- (7) Exhibit B Part 1: Operations and Administration Terms and Conditions;
- (8) Exhibit B Part 2: Service Element Standards and Procedures;
- (9) Exhibit B Part 3: Financial Terms and Conditions;
- (10) Exhibit C: Special Terms and Conditions;
- (11) Exhibit D: General Terms and Conditions;

- (12) Exhibit G Part 1: Required Subcontractor Provisions;
- (13) Exhibit G Part 2: Subcontractor Insurance Requirements;
- (14) Attachment #1: Days and Hours of Operation;
- (15) Attachment #2: Subcontractor Disclosures Report.

c. For purposes of this Agreement, “Work” means specific work to be performed or services to be delivered by County as set forth in Exhibit B Part 2.

EACH PARTY, BY EXECUTION OF THIS AGREEMENT, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

3. Signatures.

Clackamas County

By:

Authorized Signature

Printed Name

Title

Date

State of Oregon acting by and through its Oregon Department of Human Services

By:

Authorized Signature

Printed Name

Title

Date

Approved for Legal Sufficiency:

Approved via e-mail by Wendy J Johnson
Department of Justice

June 30, 2021
Date

EXHIBIT A

Definitions

As used in this Agreement, the following words and phrases shall have the indicated meanings. Certain additional words and phrases are defined in the Service Element Standards and Procedures, in the special conditions of the Service Element Prior Authorization (SEPA), and in the Exhibit H Part 1 “Privacy and Security Agreement”. When a word or phrase is defined in a particular Service Element Standards and Procedures, or special condition in the Service Element Prior Authorization, the word or phrase shall not necessarily have the ascribed meaning in any part of the Agreement other than the particular Service Element Standards and Procedures, or special condition in which it is defined.

1. **“Access”** means the ability or the means necessary to read, communicate, or otherwise use ODHS or State Data, Network and Information Systems, and Information Assets.
2. **“Allowable Costs”** means the costs determined in accordance with the provisions of 2 C.F.R. Subtitle B, with guidance at 2 C.F.R. part 200, except to the extent such costs are limited or excluded by other provisions of this Agreement, whether in the applicable Service Element Standards and Procedures, or special conditions identified in the Service Element Prior Authorization.
3. **“Career Development Plan” or “CDP”** has the meaning set forth in OAR 411-317-0000.
4. **“Case Management Entity” or “CME”** has the meaning set forth in OAR 411-317-0000.
5. **“Case Management Services”** has the meaning as set forth in OAR 411-317-0000.
6. **“CDDP Administrator”** has the meaning set forth in Exhibit C, Section 3 of this Agreement.
7. **“Claim”** has the meaning set forth in OAR 411-370-0010.
8. **“Client”** has the same meaning as Individual or Recipient, for purposes of this Agreement.
9. **“Client Prior Authorization” or “CPA”** means an authorization for a specific Individual to receive a particular Service, by an identified Provider, at a rate approved by ODHS. The CPA is submitted by County for the Provider once an Individual and the Provider have agreed to a Service. The CPA specifies:
 - a. the Service,
 - b. the Individual or Recipient,
 - c. the effective date and end date for the Services authorized in the CPA, and
 - d. the rate for the Service.
10. **“Client Record(s)”** means any Client, applicant, or participant information regardless of the media or source, collected by County in the course of completing the Work, provided through the Network and Information Systems to County, or otherwise exchanged between the parties.

11. **“CMS”** means Centers for Medicare and Medicaid Services.
12. **“Common Law Employer”** or **“CLE”** means the employer referred to in OAR 411-375-0010.
13. **“Community Developmental Disabilities Program”** or **“CDDP”** has the meaning as set forth in OAR 411-317-0000.
14. **“Community First Choice K Plan”** or **“K Plan”** has the meaning as set forth in OAR 411-317-0000.
15. **“Developmental Disability”** or **“DD”** has the meaning as set forth in OAR 411-320-0020.
16. **“Developmental Disabilities Services”** or **“DD Services”** has the meaning as set forth in OAR 411-317-0000.
17. **“Disbursement Claim”** means a document executed and delivered to ODHS by a Provider or County, either electronically in eXPRS or in hard copy, with respect to a DD Service authorized in a CPA and PPA, or POC, certifying that a unit of that DD Service was delivered by a Provider identified in the CPA and PPA, or POC, to the Individual identified in the CPA or POC, during the period specified in the CPA or POC; and requesting disbursement of funds for that unit of DD Service.
18. **“Employer”** has the meaning as set forth in OAR 411-317-0000.
19. **“Employer Resource Connections”** or **“ERC”** means the voluntary training program provided by the Oregon Home Care Commission and offered to all Individuals receiving in-home Services. ERC meets the K Plan requirement for voluntary training on how to select, manage, and dismiss attendants, and provides activities to empower and inform Individuals receiving in-home Services regarding their rights, roles, and responsibilities as employers of Personal Support Workers.
20. **“Express Payment and Reporting System”** or **“eXPRS”** means an information system for managing the disbursement and tracking of ODHS payments for the Developmental Disabilities Programs.
21. **“Federal Funds”** means all funds paid to CDDP under this Agreement that ODHS receives from an agency, instrumentality, or program of the federal government of the United States.
22. **“Full-time Equivalent”** or **“FTE”** means a unit of measure equivalent to one person working full-time. An FTE is calculated based on the CME’s work hours of a regular work week. Employees who work fewer hours than a regular work week have their hours divided by the regular full-time work week hours. An FTE of 1.0 is equivalent to full-time; an FTE of 0.5 is half of a full-time equivalent.
23. **“Functional Needs Assessment”** or **“FNA”** has the meaning as set forth in OAR 411-317-0000.
24. **“Individual”** has the meaning as set forth in OAR 411-317-0000.
25. **“Individual Support Plan”** or **“ISP”** has the meaning as set forth in OAR 411-317-0000.

26. **“Individual Support Plan Team”** or **“ISP Team”** means a group of people that include the Individual, the Services Coordinator or Personal Agent, when applicable the Individual’s designated representative, or others chosen by the Individual to participate in Service planning, as described in OAR 411-415-0070.
27. **“Information Asset(s)”** refers to all information provided through ODHS, regardless of the source, which requires measures for security and privacy.
28. **“Intellectual Disability”** or **“ID”** has the meaning as set forth in OAR 411-320-0020.
29. **“Intellectual or Developmental Disability”** or **“I/DD”** has the meanings as described in OAR 411-320-0020.
30. **“Level of Care”** or **“LOC”** has the meaning as described in OAR 411-317-0000.
31. **“Local Match”** means the opportunity for Local Government Entities, including Transit Districts, to request additional Federal Funds to recoup costs for Intellectual and Developmental Disabilities program expenditures, *exceeding allotted state funds*, in the following services: Local Match Transportation and Case Management Operations. The Local Government Entity is responsible for the local fund portion and providing the necessary documentation to ODHS for approval. If approved, the local funds will be submitted for federal match.
32. **“Medicaid”** means Federal Funds received by ODHS under Title XIX of the Social Security Act and Children’s Health Insurance Program (CHIP) Funds administered jointly with Title XIX funds as part of state medical assistance programs by ODHS.
33. **“Medicaid Fraud”** means the providing of false information to claim reimbursement for Medicaid funded services. Medicaid Fraud includes, but is not limited to, the following activities: billing for services not actually performed; billing for more expensive services than actually rendered; billing for several services that should be combined into one billing; and billing twice for the same service.
34. **“Misexpenditure”** means money, other than Overexpenditure, disbursed to County by ODHS under this Agreement and expended by County or a Subcontractor that:
 - a. Is identified by the federal government as expended contrary to applicable statutes, rules, the provisions of 2 C.F.R. Subtitle B, with guidance at 2 C.F.R. part 200, or any other authority that governs the permissible expenditure of such money, for which the federal government has requested reimbursement by the State of Oregon, whether in the form of a federal determination of improper use of Federal Funds, a federal notice of disallowance, or otherwise; or
 - b. Is expended in a manner not permitted by this Agreement, including without limitation, any money expended by County, contrary to applicable statutes, rules, OMB Circulars, or any other authority that governs the permissible expenditure of such money; or
 - c. Is expended on the delivery of a DD Service in violation of the Service Element Standards and Procedures of this Agreement with respect to that DD Service.

35. **“Network and Information System(s)”** means the ODHS and State of Oregon’s computer infrastructure which provides personal communications, Data such as Client Records; Access to other Information Assets, regional, wide area and local networks, and the internetworking of various types of networks.
36. **“ODDS”** has the meaning set forth in OAR 411-317-0000.
37. **“Office of Training, Investigation and Safety”** or **“OTIS”** means the ODHS office that investigates reports of suspected abuse or neglect.
38. **“Oregon Needs Assessment”** or **“ONA”** has the meaning set forth in OAR 411-317-0000.
39. **“Overexpenditure”** means money disbursed by ODHS under this Agreement and expended by County that is in excess of the amount County is entitled to expend as determined in accordance with the funding calculation methodologies set forth in the applicable Service Element Standards and Procedures.
40. **“Personal Agent”** shall have the meaning set forth in OAR 411-317-0000.
41. **“Personal Support Worker”** or **“PSW”** has the meaning as set forth in OAR 411-317-0000.
42. **“Plan of Care”** or **“POC”** means a service authorization feature in eXPRS that is a collection of individual Provider service authorizations for an Individual with I/DD. These Service Authorizations in accepted status are required to enable the Provider of the authorized Service to successfully submit Claims for payment.
43. **“Program Area”** means the geographic area within the State of Oregon where County is contracted to provide DD Services.
44. **“Provider”** has the meaning as set forth in OAR 411-317-0000.
45. **“Provider Enrollment Application and Agreement”** or **“PEAA”** has the meaning set forth in OAR 411-370-0030.
46. **“Provider Prior Authorization”** or **“PPA”** means an authorization, either through eXPRS or by submission to ODHS of a document acceptable to ODHS, for funding awarded in the SEPA for delivery of a particular DD Service by a particular Provider, and for Provider submission of Disbursement Claims for the DD Service, that specifies:
 - a. the DD Service,
 - b. the Provider,
 - c. a period, during which the authorization may be used to support delivery of the DD Service by the Provider,
 - d. whether the PPA is an “Opt Out” PPA for those Providers that are paid through a CPA and have fluctuating amounts in a specific month; or the PPA is for a specific amount authorized to the Provider for a specified time frame. If the PPA is for an amount for a specific Provider, the total amounts authorized in the PPAs cannot exceed the total SEPA amount for that time frame for that DD Service.
47. **“Rationed Fee for Services”** or **“RFFS”** means the Case Management Entity billings paid up to the maximum monthly amount of the PPA. All Case Management Entity

billings entered that meet the criteria for a successful Claim, yet exceed the maximum monthly amount of the PPA, will suspend to be utilized for future payments up to the amount outlined in the Biennial Legislatively Approved Budget.

48. **“Recipient”** has the meaning as set forth in OAR 411-370-0010.
49. **“SEPA Adjustment”** means a document, acceptable to ODHS, presented electronically in eXPRS by County, that amends the SEPA, with respect to one or more DD Services, to reflect the new maximum amount of funding that ODHS will provide under this Agreement through eXPRS for the specified Service Element(s), as well as any new or modified special performance or other requirements.
50. **“SEPA Pass Phrase or Pass Code”** or **“SEPA Pass Phrase”** means a code used by eXPRS to verify the identity of the individual accepting the SEPA Adjustment on behalf of County.
51. **“Service”** means any one of the DD Services for Individuals listed in Exhibit B Part 2 of this Agreement provided directly by CDDP, and authorized by CDDP or Subcontractor, pursuant to this Agreement.
52. **“Service Authorization”** means an authorization by CDDP of the DD Services that CDDP is responsible to authorize according to Exhibit B Part 2, as identified in an Individual’s ISP, and entered for billing purposes into eXPRS via POC or a CPA.
53. **“Services Coordinator”** has the meaning as set forth in OAR 411-317-0000.
54. **“Service Element”** has the meaning as set forth in OAR 411-317-0000.
55. **“Service Element Prior Authorization”** or **“SEPA”** means the maximum amount of Service Element funding that ODHS will provide to County under this Agreement through eXPRS, and any Service Element associated special performance or other requirement. The SEPA is broken down by Service Element and may be amended from time to time by a SEPA Adjustment.
56. **“Service Element Standards and Procedures”** has the meaning set forth in OAR 411-370-0010.
57. **“Service Equity”** means promoting health, safety, and independence for all Individuals by adapting services and policy to eliminate discrimination and disparities in the delivery of human services.
58. **“Settlement”** means the process through which ODDS determines Underexpenditures and Overexpenditures and resolves Misexpenditures at the end of each Agreement period, upon Agreement termination or on an interim basis, if necessary, during the term of this Agreement.
59. **“Subcontract”** means a contract between the County and a third party to perform one or more of the direct Service(s) required under this Agreement. Subcontract does not include contracts for County ancillary services.
60. **“Subcontractor”** means a third party contractor that contracts with the County to perform one or more Service(s) under this Agreement and may include all CDDP functions that the County is required to perform under this Agreement.

61. **“Transmittals”** means communications that request action from, or provide policy, program, training, and other information to County. Transmittals take the form of Action Requests (AR), Information Memoranda (IM), or Policy Transmittals (PT).
62. **“Underexpenditure”** means money disbursed by ODHS under this Agreement and not expended by County that is less than the amount County is entitled to expend as determined in accordance with the funding calculation methodologies set forth in the applicable Service Element Standards and Procedures.
63. **“User”** means any individual authorized by ODHS to access Network and Information Systems and who has an assigned unique log-on identifier.
64. **“Written Materials”** means documents and forms created by CDDP or ODDS, in connection with Services being provided to the Individual.
65. **“Workload Model”** or **“WLM”** means the computation of FTE based on the Random Moment Sampling Survey (RMSS) and fixed percentages based on caseloads.

EXHIBIT B PART 1

Operations and Administration Terms and Conditions

1. CDDP Administrative Responsibilities.

In performing the Work under this Agreement:

- a. CDDP shall adhere to all Oregon Administrative Rules (OAR), Oregon Revised Statutes (ORS) and the Code of Federal Regulations (CFR) pursuant to this Agreement. CDDP shall comply with all language and requirements outlined in the Community First K Plan and waiver, including updates and amendments, or as instructed by ODDS through Transmittals. In general, Transmittals are written to provide clarification or guidance of an existing rule, statute, or CFR.

Outside of natural disasters, pandemics or circumstances that would put Individuals in service at risk, any policy and Transmittal that is written by ODDS that requires new work for a Case Management Entity (CME) will necessitate ODDS to give the CME an opportunity to provide input within specified timelines. ODDS will analyze the input for impact to workloads, making adjustments where appropriate, prior to issuing the Action Request (AR) or Policy Transmittal (PT). This excludes policies resulting from a rule change that is required by a federal or state directive, as rules and rule amendments require a fiscal analysis and are provided to the Rule Advisory Committee.

- b. CDDP shall participate in person, by phone, or video conference, in monthly CDDP program manager meetings as designated by ODDS. Meetings will be scheduled by ODHS with representatives designated by ODHS to review, clarify, and further plan the Work performed under this Agreement. These ODHS and CDDP meetings shall be scheduled at a time mutually acceptable to both parties. CDDP will ensure a representative will participate in 80% of CDDP program manager meetings for the term of this Agreement.
- c. CDDP shall participate in person, by phone, or video conference in other required, scheduled meetings. ODDS shall make reasonable efforts to schedule meetings at a time and place conducive to the greatest number of participants.
- d. CDDP management is responsible for ensuring all information provided by ODHS, during the monthly Case Management Leadership Team (manager or director) meetings, is communicated effectively and timely with all applicable CDDP staff.
- e. CDDPs must comply with ODHS requirements for the use of ODHS electronic systems utilized for information related to Individuals and Providers upon implementation and training.
- f. **Emergency Plan.** CDDP must maintain an emergency plan, policies, and procedures in accordance with OAR 411-320-0040(10) at all times that address responses to any natural disasters, pandemics, or other times when the CDDP may have to react to reducing office hours and or building closures; and that ensure

continuity of care to Individuals. CDDP must submit their emergency plan upon request for review by the ODDS Case Management Support Services Unit.

- g. Service Equity Plan.** CDDP will complete a self-assessment related to identified Service Equity priorities for Services directly provided by CDDP no later than June 30, 2022. Between July 1, 2022 and June 30, 2023, CDDP will use the results of the self-assessment to create a Service Equity Action Plan in partnership with ODDS. The identified Service Equity priority areas include, but are not limited to:

- (1) Systemic racism,
- (2) Language access,
- (3) Workforce diversity,
- (4) Data analysis and collection,
- (5) Service Access,
- (6) Community engagement, and
- (7) Identification and development of staff skills, awareness and or practices using an equity lens when providing Services.

- h.** CDDP's Service Equity self-assessment and plan may be developed in any format. ODDS will not require a specific format.

- i.** If requested, ODDS will provide technical assistance to CDDP for Service Equity assessment and plan that may include:

- (1) Self-assessment tools,
- (2) Limited trainings for CME staff, and
- (3) Providing data.

- j. Workload Model; Random Moment Sampling Survey.**

- (1) CDDP will assist ODDS in completing the Random Moment Sampling Survey (RMSS) for the computation of FTE and the fixed percentages for caseloads. ODDS will submit the FTE survey with the first RMSS in December following Agreement execution. Failure of the CDDP to complete the survey may result in a reduction of funding.
- (2) ODDS will report the maximum number of eligible Individuals the CDDP will serve at the biennium start, and as changes are made, based on the biennial Workload Model. The most recent Workload Model is attached to the SEPA for the period for the Services. Funding for CDDP FTEs is allocated within the Workload Model.

2. CDDP Assistance with Provider and Employer Enrollment, Credentials, and Payments.

- a.** CDDP shall assist any Individual who wishes to hire a Personal Support Worker (PSW) with the following:

- (1) Assist the Individual in becoming a Common Law Employer (CLE) or identifying a designated CLE and provide resources to prospective CLEs on their role. For each CLE CDDP will:

- (a) Initiate enrollment of the CLE into the Fiscal Management Agent Services (FMAS) vendor’s web portal (currently referred to as “BetterOnline”).
 - (b) Refer Individuals to the Employer Resource Connection contractor serving in the Program Area. If the CDDP identifies a need for ERC program services and resources, the CDDP shall refer the CLE to the ERC contractor.
 - (2) Contacts for information from Oregon Home Care Commission (OHCC).
CDDPs must comply with requests from the OHCC and its Customer Relations and Workers’ Compensation Units for information regarding workers’ compensation claims, PSW safety complaints, ADA accommodation requests, unemployment claims related to an individual who is the employer of PSWs, PSW late payment complaints, and PSW complaints and grievances.
 - (3) Assist the Individual in the enrollment process for PSWs by:
 - (a) Providing PSWs with a Provider Enrollment Application and Agreement (PEAA) and initiating a Criminal History Check (CHC).
 - (b) Initiating the PSW enrollment in the FMAS vendor’s web portal. For each new PSW, CDDP will provide the required information to successfully enroll the PSW.
 - b. CDDP shall assist Individuals by verifying that certifications, licenses, CHCs, driver’s licenses, and auto insurance are valid prior to Services being authorized for PSW Providers.
 - c. CDDP must review and approve or reject the PSW time sheet, progress note, and mileage log. CDDP must review and approve or reject PSW submitted Services Delivered billing entries accordingly. CDDPs will work with PSWs or direct PSWs to work with their CLE for suspended payment claims that are unrelated to an eligibility issue.
- 3.** CDDP is required to submit an Out of Cycle (OOC) request for payment for PSWs, if the PSW turned in a properly completed timesheet within the dates as outlined on the approved PSW payment calendar, and the timesheet was not approved due to an administrative error on the part of the CDDP. The OOC request for payment must be submitted within one business day of the CDDP verifying that an error occurred and that it was due to an administrative error. CDDP will be invoiced for all fees incurred for OOC requests due to administrative error, including but not limited to, no more than a \$125 fee per day for initiating an OOC. ODDS will calculate the \$125 fee per day based on number of requests received for the day and invoice CDDP quarterly.
- CDDP will also be invoiced for any approved PSW Late Fees generated due to CDDP error at a rate of \$20 per day as determined through the payment complaint process. The number of days for PSW Late Fee will be calculated as follows: actual date processing occurred minus scheduled processing date equals number of late days. PSW Late Fees

will only match, and not exceed, the overall gross payment that is delayed. This cap on PSW Late Fees will not apply when a PSW experiences an additional payment occurrence within one calendar year.

In the event that a CDDP has reasonable cause to believe that a CLE or PSW is committing Medicaid Fraud, CDDP will notify ODDS Provider Administration Manager and Medicaid Fraud Unit immediately.

4. CDDP Responsibilities: Lane v. Brown et al Settlement Agreement.

CDDP shall develop a Career Development Plan (CDP), consistent with ODDS policy and administrative rules, as well as Executive Order 15-01, as part of the ISP for all Individuals of working age, including transition age Individuals, prior to their expected exit from school or within one year of an unexpected exit from school.

- a. CDDP shall submit copies of the CDP documents to ODHS upon request or cooperate with ODDS field review to verify compliance with timely development of CDPs.
- b. In the event the CDDP fails to develop a CDP for any Individual, the CDDP shall take corrective action and develop the CDP within 90 calendar days of the date the CDDP is notified by ODHS, or the CDDP self identifies the absence of a required CDP. The CDP development must meet the requirements as outlined in ODDS policy and administrative rule. These newly developed CDPs must be submitted to ODDS for a quality assurance review.
- c. If CDDP fails to respond or follow the directives as lined out in a. and b. above, a financial penalty not to exceed \$150 per identified CDP may be assessed.

5. Days and Hours of Operation; Notifications to ODDS.

- a. CDDP must provide the days and hours it will be open to the public by submitting a completed Attachment #1 to ODDS when the Agreement is signed by the CDDP. Failure by CDDP to provide this information will prevent Agreement execution by ODHS and distribution of the signed Agreement. CDDP must report any changes to the days and hours of operation to ODDS.Contracts@dhsosha.state.or.us within 24 hours of the decision.
- b. If CDDP must close or reduce its hours of operation as described in Attachment #1 for any reason, including but not limited to a loss of utilities, a pandemic or a natural disaster, CDDP must notify ODDS' Agreement Administrator by email or telephone within 24 hours of the reduction or closure. If CDDP cannot meet the deadlines to approve PSW timesheets, CDDP will notify ODDS' Provider Administration Manager immediately by email or telephone.
- c. ODDS reserves the right to reduce funding if CDDP's days or hours of operation are reduced from those identified in Attachment #1 unless the reduction in operations is the result of an overall statewide fiscal reduction due to a legislative action.

6. ODDS Administrative Responsibilities.

- a. ODDS will publish Action Requests and Policy Transmittals that have an impact on the day-to-day processes and operation of a CDDP to the Innovation and Engagement website prior to publication. Website comments will be reviewed and responses to those comments posted at the time of publication of the Transmittal. ODDS reserves the right to not respond to all individual website comments.
- b. ODDS will publish Transmittals prior to the effective date of the Transmittal when possible. There may be times due to states of emergency, pandemics, or natural disasters that Transmittals may not be published timely and may be retroactive.
- c. ODDS will provide training to the CDDP staff prior to implementing new systems. Training may be in multiple formats including, but not limited to, in person, webinars, the ODHS approved learning management system, and other media sources. In person trainings will be conducted, at a minimum, in four areas of the State.
- d. ODDS will respond to fiscal inquiries from the CDDP within five business days of receipt of a written inquiry. Fiscal inquiries must be submitted to cau.invoice@dhsosha.state.or.us.
- e. ODDS will only post results from final quality assurance reports on the ODHS website. For strategic messaging, ODDS will analyze widespread findings that lower the results for a large number of CMEs and will bring forward those findings to the Case Management Leadership Team prior to posting on the website.
- f. If a CDDP refuses to follow the rules identified in CFRs, OARs or ORSs that require the CDDP to take action necessary to assure the health and safety of Individuals enrolled in DD Services, ODDS will notify the CDDP in writing that ODDS intends to perform the functions necessary for the health and safety of the Individuals. ODHS may reduce the funding received by the CDDP to cover the costs of ODDS fulfilling the roles necessary for the needed actions.

7. Quality Assurance.

- a. ODHS's quality assurance activities include:
 - (1) Review of Case Management Services;
 - (2) Review of assessments, ISPs, and LOCs;
 - (3) Review of CDDP's Provider monitoring, complaints, and other contracted obligations; and
 - (4) Review of approved Case Management claims.

- b.** CDDP shall:
- (1) Comply with all ODHS quality assurance reviews, plans, and processes designed to monitor and ensure CDDP's timely and accurate CMS compliance.
 - (2) Follow all undisputed remediation instructions, including timelines, resulting from the quality assurance review findings.
 - (3) Make available to ODHS' quality assurance staff, upon request, Access, including a login and password, to any electronic systems or physical documentation that contains intellectual or developmental disabilities information about Individuals enrolled in Case Management Services, if allowed under federal and state law.
- c.** ODHS shall:
- (1) Notify CDDP in advance of a ODHS quality assurance review.
 - (2) Provide timely feedback to CDDP of quality assurance review findings and an opportunity for CDDP to dispute those findings prior to the final report.
 - (3) Provide technical assistance and training to CDDP in the areas identified as needing improvement by the quality assurance review. Technical assistance and training provided by ODHS will not negate necessary remediation activities by CDDP.

EXHIBIT B PART 2

Service Element Standards and Procedures

1. Provision of Services.

- a. The DD Services listed in this Section 1 and described in this Exhibit B Part 2 must be provided as described in the appropriate federal regulations, Oregon Revised Statutes, Oregon Administrative Rules, most current ODDS expenditure guidelines, and Service Element Standards and Procedures for the DD Services. Requirements for Service Elements may be found in the OARs listed below. Any additional requirements may be found in this Exhibit B Part 2. Only the DD Services listed are subject to this Agreement.
- b. Upon acceptance of the Service Element Prior Authorization (SEPA) in eXPRS, CDDP agrees to directly provide or subcontract for the DD Services. The DD Services provided by CDDPs whose costs are covered in whole or in part with the SEPA are:

	Service Name	References
(1)	Eligibility and Licensing	Chapter 411, Division 320, Service Element Standards and Procedures
(2)	Case Management Operations	Chapter 411, Divisions 415 and 320; Service Element Standards and Procedures
(3)	Abuse Investigation Services	Chapter 411, Division 320; Service Element Standards and Procedures

2. CFDA Number(s) for all Services in Exhibit B Part 2.

In accordance with the State Controller’s Oregon Accounting Manual, policy 30.40.00.102, and ODHS procedure “Contractual Governance,” ODHS’ determination is that County is a Contractor.

The Catalog of Federal Domestic Assistance (CFDA) #(s) of Federal Funds to be paid through the Agreement: 93-778.

3. Service Element Standards and Procedures Review Process.

ODHS shall update this Exhibit B Part 2 as follows:

- a. ODDS will engage with a standing group of stakeholders to review and, if needed, modify this Exhibit B Part 2. Stakeholders shall include CDDP staff and designated representatives, ODDS staff, and other parties identified by ODDS.
- b. Upon determining that an update is necessary, a draft of the document changes will be sent to the stakeholder group via e-mail for review and comment. The ODDS e-mail shall include a time, date, and conference line number or virtual meeting information for a discussion between ODHS and CDDPs regarding the draft Service Element Standards and Procedures being reviewed. ODHS will

accept comments via e-mail for 15 business days after the date of the ODDS e-mail notification of the changes.

- c. After the discussion and the deadline for receipt of any e-mail review and comments from the CDDPs, ODHS will consider any information from CDDPs when determining the final changes to this Exhibit B Part 2.
- d. Upon completion of the review process, ODHS shall follow the amendment process as outlined in Exhibit E Section 27 “Amendments; Waiver; Consent” of this Agreement to update Exhibit B Part 2.

4. Service Authorization.

CDDP must authorize Services as outlined below:

- a. All Services, regardless of service setting or unless otherwise noted, must be authorized in eXPRS or MMIS for Long-Term Community Care Nursing (LTCCN), in a manner consistent with rule, by the CDDP in which the Individual is enrolled and is receiving Case Management Services and found eligible for I/DD Services as outlined in OAR Chapter 411, Division 320. This authorization must be obtained and documented in accordance with OARs and ODHS policies and procedures.
- b. All Services must be authorized at the appropriate rate for the service setting. All Services included in the expenditure guidelines must be entered using the rates detailed in the expenditure guidelines. Rates are subject to change upon notice from ODHS.

5. Ancillary Services.

Rates are set using the most recent ODDS expenditure guidelines. Exceptions to the published rate(s) may be allowed with prior approval by ODHS. ODDS will issue a final funding memo to CDDP when the payment of invoice is approved. ODDS will process payment within 45 days in accordance with ORS 293.462.

6. Employment Services; Other Non-Residential Day Services.

- a. CDDP will assist ODHS in monitoring compliance with the following Provider special reporting requirements:
 - (1) Provider must complete such Provider assessments as requested by ODHS in a timely and accurate manner.
 - (2) Provider will report to ODHS any employment outcome related information, including but not limited to wages, earnings, and turnover data, to ODHS using forms and procedures designated by ODHS.
 - (3) Providers must at all times comply with all other legal requirements and maintain documentation evidencing compliance such as subminimum wage certificates including the US Department of Labor Section 14(c) certificate.

- b. The Individual will receive the hours of Services per week as agreed to by the Individual, his or her ISP team, and the Provider. Service hours provided to the Individual may not be lowered to accommodate any ODHS reductions in the Provider rate.

7. Supported Living.

Upon implementation of the rate table, the ODHS budget tool will no longer be needed for Individuals receiving Supported Living Services.

8. Transportation Services.

- a. Transportation Service rates are set using the expenditure guidelines or the transit providers published rate.
- b. Individuals enrolled in Transportation Local Match Services for going to or from employment services, including day support activities, are not eligible for other Transportation Services for transportation to or from employment services, including day support activities without an exception.
- c. CDDP must maintain Transportation Local Match rosters and report changes regarding Individuals eligible for Transportation Local Match to transit districts as outlined in transportation worker's guide. CDDP's failure to report these changes to the transit district will result in CDDP paying for rides provided to Individuals ineligible for Transportation Local Match.

9. Special Projects.

- a. Special Projects are a mechanism for special payments as a pass-through payment to the CDDP.
- b. All requests must be submitted to ODDS.FundingReview@dhsosha.state.or.us prior to authorization.
- c. Performance requirements for Special Projects not otherwise defined in this Agreement are described below:
 - (1) A Special Project must be authorized in advance by ODDS, and the Special Project must be performed prior to ODDS releasing funding. Funding for Special Projects will be paid to the CDDP through eXPRS or direct payment.
 - (2) Terms and conditions of each Special Project will be defined in cooperation with the CDDP.
- d. All Special Project funds are subject to Settlement to confirm and reconcile any discrepancies that may have occurred between actual ODHS disbursements of funding and the amount actually delivered and invoiced at the end of the Agreement period or biennium in which they are authorized, whichever comes first.

10. Room and Board General Fund (R&B GF).

- a. Services for R&B GF are limited to those Individuals with I/DD who are not Medicaid eligible due to the Individual being undocumented but are working

towards United States citizenship. R&B GF Services assist these Individuals with room and board (R&B), personal incidental items, and as necessary, allowable medical expenditures.

b. Authorizing R&B GF Services.

- (1) Individuals must be 18 or older and concurrently receiving Residential Services or Adult Foster Home Services.
- (2) Services must be approved in advance by ODHS. CDDP must submit the following documentation when requesting R&B GF Services:
 - (a) Individual's name;
 - (b) Individual's prime number;
 - (c) Effective date of requested R&B GF Services;
 - (d) Amount of monthly funds requested;
 - (e) Information regarding Individual's citizenship status;
 - (f) Steps Individual has taken to date in obtaining citizenship;
 - (g) Steps to be taken by the Individual to obtain citizenship during the time frame requested for R&B GF Services;
 - (h) A copy of the Individual's most current Individual Support Plan (ISP), if funding for medical expenditures is requested;
 - (i) A methodology for calculating the funds for medical expenditures, if applicable;
 - (j) Documentation that the Individual has been denied Citizen Alien Waived Emergent Medical (CAWEM) and Oregon Health Plan (OHP) insurance coverage.
- (3) An Individual cannot receive R&B GF medical expenditure funding if the Individual is receiving OHP or CAWEM benefits unless the ISP team determines that the Individual's medical needs exceed what is covered CAWEM benefits and requests an exception.
- (4) If the Individual has been approved to receive R&B GF medical expenditure funding and has been approved for CAWEM, CAWEM must be used for any medical expenditure covered by CAWEM. CAWEM coverage is limited to emergency medical services only.
- (5) R&B GF funds may be used for an Individual in a medical emergency even though the emergency situation is not included in the ISP. For purposes of this Exhibit B Part 2, an emergency situation is defined as a sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in placing the Individual's health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part.
- (6) The following medical services are not authorized under R&B GF Services:
 - (a) Routine dental care and diagnostic testing such as annual or semi-annual cleanings, fillings, root canals and routine x-rays.

- (b) Routine eye exams, diagnostic testing, contacts, glasses, and lenses.
- (7) R&B GF authorizations may not exceed 12 months. If requesting a renewal, CDDP must submit:
 - (a) Updated information about the status of the Individual's citizenship;
 - (b) Steps the Individual has taken towards citizenship since the last update;
 - (c) Steps to be taken by the Individual to obtain citizenship during the requested timeframe for renewed R&B GF Services; and
 - (d) Updated documentation on CAWEM and OHP eligibility.

c. Rate Setting for R&B GF Services.

- (1) The funds awarded for R&B GF Services for R&B and personal incidentals are equivalent to the anticipated federal Supplemental Security Income (SSI) as defined in Code of Federal Regulations (CFR) Part 416.101 – 416.121, 416.401 – 416.435 and 416.501 - 416.665, and the Oregon Supplemental Income Program (OSIP) Manual under “Room and Board and Personal Needs Standards”. Monthly rates are subject to change to reflect federal cost-of-living or other ODHS approved adjustments. These monthly rate changes do not require a request by CDDP and approval from ODHS. Any monthly rate adjustments resulting from these changes will be added by ODHS to awards ODHS authorized for Individuals receiving R&B GF Services.
- (2) R&B GF funds must be used for “current maintenance” costs incurred by an Individual receiving R&B GF Services, as defined in the above-referenced CFRs, the OSIP Manual, and as outlined in this Exhibit B Part 2. Current maintenance includes the room and board fees charged by the Provider to the Individual and costs incurred for clothing, medical care authorized by ODHS, and personal comfort care for the Individual, whether provided directly by, or facilitated by, the Provider of the R&B GF Services.
- (3) R&B GF funds used for an Individual's medical expenses must only be for necessary medical expenditures for the Individual up to the amount authorized by ODHS.

d. Disbursement of R&B GF Service Funds.

- (1) A SEPA will be created for the total amount of the R&B GF Service allowed for the Individual prior to Services being rendered.
- (2) R&B GF funds are disbursed through a PPA in eXPRS to the CDDP.
- (3) R&B and personal incidental funds are disbursed at the beginning of each Service month through a ODHS created 12-month PPA. CDDP must remit payment to the Provider after receiving disbursement.

- (4) Medical Expenditures are disbursed at the beginning of a service period through an ODHS created three-month PPA. CDDP must remit payment to the Provider after receiving disbursement. If ODHS has paid to CDDP, through the release of the PPA funding, more R&B GF medical expenditure funds than reported by the Provider and submitted by CDDP, ODHS will stop releasing funds for R&B GF medical expenditures until the balance due CDDP for R&B GF medical expenditures is no less than one month of the allocated PPA funding. If a Provider's monthly medical expenditure report shows the Provider needs additional medical expenditure funds to cover future medical costs for an Individual, and the additional funds and medical expenditures are within the Individual's ODHS authorized funding, then ODHS will release the additional funding up to, but not to exceed, the SEPA amount.

e. Special Provisions of R&B GF Services.

- (1) Medical expenditure funding for an Individual for R&B GF Services paid to a Provider via CDDP may only be carried over into future months within the same biennium. When medical expenditure funding carry-over occurs, the next monthly payment to CDDP for the Individual will be reduced by ODHS by the amount carried over from the previous months. CDDP may not carry over funding of R&B GF Services for medical expenditures into the next biennium. The medical expenditure funding must be returned to ODHS immediately upon request by ODHS, or within 45 calendar days of the end of the biennium in which the funds were paid, whichever date is sooner.
- (2) CDDP shall notify ODHS within 14 calendar days if the Individual's circumstances change and the Individual is no longer eligible for R&B GF Services.
- (3) ODHS may request at any time other information regarding the use of R&B GF Services or the justification of such Services. CDDP must respond to any request within 10 business days.
- (4) CDDP must submit to ODHS quarterly, paid Provider invoices for R&B and personal incidental expenditures. Provider invoices must reflect that the Individual received the R&B GF Services during the time period covered by the invoices. If paid Provider invoices are not received by ODHS, the R&B and personal incidental funds paid to Provider, and not supported by paid Provider invoices, must be recovered by CDDP and CDDP must then return this R&B GF funding to ODHS.
- (5) For Medical Expenditures:
 - (a) Providers shall report to CDDP the allowable medical expenditures each month on a ODHS prescribed form. This monthly report will serve as the Provider invoice for medical expenditures for R&B GF Services. This monthly medical expenditure report must include the following, at minimum:

- i. Individual's name;
 - ii. Individual's prime number;
 - iii. Month or timeframe for the reported R&B GF Services;
 - iv. Provider's name and eXPRS Provider number;
 - v. Description of each medical expenditure listed separately;
 - vi. Amount of each medical expenditure;
 - vii. Name of entity providing the R&B GF Service, such as the name of pharmacy, doctor, or therapist; and
 - viii. Actual date of R&B GF Service, not the date the Service was paid for by the Provider.
- (b) Provider must submit a monthly medical expenditure report to the CDDP within 14 calendar days of the end of each month R&B GF Services were provided. The Provider medical expenditure report for the last month in the biennium must be submitted to CDDP within 14 calendar days of the end of each biennium.
- (c) CDDP shall submit for payment the Provider's monthly medical expenditure report on a form prescribed by ODHS no later than 45 calendar days from the end of the month in which R&B GF Services were provided. ODHS will review this report for accuracy and adherence to this Exhibit B Part 2. CDDP will be notified of any non-allowable expense and will be required to recoup the funding from the Provider. CDDP will remit to ODHS the recouped funding within 45 calendar days of recoupment.
- f. ODHS reserves the right to end R&B GF Services with proper notice to the Individual, Provider and CDDP.
- g. All R&B GF funds are subject to Settlement to confirm and reconcile any discrepancies that may have occurred between actual ODHS disbursements of funding and the amount actually delivered and invoiced at the end of the Agreement period or biennium in which they are authorized, whichever comes first.
- h. All invoices must be submitted to cau.invoice@dhsoha.state.or.us.

11. Eligibility and Licensing.

- a. Eligibility and Licensing encompasses the activities related to determination of Eligibility of Individuals under OAR Chapter 411, Division 320 and assisting in the licensing of Adult Foster Homes under OAR Chapter 411, Division 360; and assistance in certifying Child Foster Homes under OAR Chapter 411, Division 346, unless otherwise exempt under Oregon law.
- b. **Standards and Procedures not identified in rule.**
 - (1) Special Reporting Requirements
 - (a) Upon ODHS' written request, CDDP will provide data and information relative to the implementation of Eligibility and

Licensing Services within the time specified by ODHS in its request to CDDP.

- (b) CDDP must ensure applications, determinations and reason for decision is documented in eXPRS as outlined in OAR 411-320-0080. Upon request from ODHS, the CDDP must complete the eligibility tracking document and provide a response within 30 calendar days of request.
- (2) Billing and Payment Procedures
- (a) ODHS will provide CDDP with funding for Eligibility and Licensing Services by entering a Service Element Prior Authorization (SEPA) and Provider Prior Authorization (PPA) based on the approved CDDP Workload Model or its funding level for FTE staff.
 - (b) ODHS will disburse funding for Eligibility and Licensing Services for a specified period of time equal to the monthly amount set forth in the accepted SEPA and approved in the PPA, as such amounts may be updated from time to time. Any recovery of funding will be done as outlined in Exhibit B Part 3 of this Agreement.
- (3) CDDP, as a Provider of Eligibility and Licensing Services that are funded by ODHS, must:
- (a) Employ an identified individual as an Eligibility Specialist, as defined in OAR 411-320-0020 (14), and meet qualifications outlined in OAR 411-320-0030 (5)(d), to perform the duties outlined in OAR 411-320-0030 (9)(b) and OAR 411-415-0050; or have an agreement with another CDDP to perform eligibility determination for the CDDP receiving the Eligibility and Licensing funding. If there is an agreement with another CDDP to perform eligibility determinations, the agreement must include the provision of Eligibility and Licensing Services in that CDDP's Program Area.
 - (b) Employ an identified individual as a Licensor who meets qualifications indicated in OAR 411-320-0030 (5)(g) and performs the duties outlined in OAR 411-320-0030 (9)(e); or have an agreement with another CDDP to perform foster care licensing and certification for the CDDP receiving the Eligibility and Licensing funding. If there is an agreement with another CDDP to perform foster care licensing and certification, the agreement must include the provision of Eligibility and Licensing Services in that CDDP's Program Area.
 - (c) Employ sufficient staff to perform the eligibility determinations and licensing duties within required timelines for its own CDDP and the CDDP with whom it is subcontracting if performing these duties for another county.

- (d) Use ODHS approved systems, forms, and procedures for eligibility determination services.
- (e) Inform ODHS' Office of Developmental Disabilities Services (ODDS) of the name(s) of the CDDP's designated Eligibility Specialist(s) and notify ODDS if the CDDP assigns a new Eligibility Specialist.
- (f) Will determine an Individual's eligibility for Services within the time frames identified by ODHS in OAR 411-415-0030 and OAR 411-320-0080.
- (g) Ensure that an Eligibility Specialist (ES), or the ES processor with the appropriate training and eXPRS user role, completes the appropriate eligibility paperwork and intake screens in eXPRS.
- (h) Complete the eXPRS eligibility within ten business days of any eligibility determination or change.
- (i) Complete the supplemental LOC assessment through the Oregon Needs Assessment, in compliance with OAR 411-415-0060.

12. Case Management Operations.

- a.** Case Management Operations encompass the activities related to the general administration and management of a Community Developmental Disabilities Program (CDDP). These activities include, but are not limited to, ensuring that all CDDP staff receive necessary training, that all services offered by the CDDP are understood by staff, as well as the rules that govern those services, and that all staff comply with OAR Chapter 411, Division 320 as it describes the requirements of CDDP staff.
- b.** Case Management Services are delivered to Individuals who are eligible for Intellectual and or Developmental Disabilities Services (I/DD Services) funded by ODHS in an identified Program Area.
- c. General Performance Requirements.**
 - (1) For each eligible Individual receiving Case Management Services, the CDDP shall create and submit a Client Prior Authorization (CPA) in eXPRS for Case Management Services within five business days of the CDDP's determination that the Individual is eligible for Case Management Services. Updates or changes to an Individual's eligibility or service period for Case Management Services must be reflected in the Individual's CPA within five business days of the CDDP's receipt of notification of change. The Case Management CPAs that are submitted successfully by the CDDP and are accepted through eXPRS will serve as the CDDP enrollment roster for Case Management Services.
 - (2) Providers of Case Management Services funded by ODHS shall:
 - (a) Comply with the requirements of OAR Chapter 411 Division 320 "Community Developmental Disabilities Program" and Division

415 “Case Management Services for Individuals with Intellectual or Developmental Disabilities”, as such rules may be revised from time to time.

- (b) Complete annual plan entry into eXPRS for any Plan of Care Services under the guidelines identified in OAR 411-415-0070 “Service Planning”. Failure to follow the guidelines identified may result in payment withholding for services rendered or other actions as deemed appropriate by ODHS.
- (c) Develop, maintain, and effectively implement systems and procedures for the timely and accurate documentation of Case Management Services.
- (d) Comply with all ODHS requirements designed to assure the timely and accurate enrollment, Service Authorization, and service payment for Individuals receiving Case Management Services.
- (e) Ensure that all Claims billed are for activities that meet ODHS guidelines for Case Management.
- (f) Ensure each Individual receiving Case Management Services is eligible for DD Services, with eligibility determined in accordance with OAR Chapter 411, Division 320, as such rules may be revised from time to time.
- (g) Complete and submit Case Management Service eligibility or enrollment information via established methods, and update forms following instructions and using forms(s) or method(s) designated by ODHS. Failure to submit the Case Management Service eligibility or enrollment form may delay the approval of the service authorization for Case Management Services.
- (h) Ensure that all Oregon Administrative Rules and ODHS policies, procedures, and Transmittals are complied with and that CDDP staff provide Case Management Operations in compliance with Exhibit B Part 2 of this Agreement.

d. Special Reporting Requirements.

- (1) Upon the written request of ODHS, the CDDP shall supply data and information relative to the implementation of Case Management Services within 14 business days of request, unless otherwise mutually agreed upon.
- (2) CDDP shall respond to ODHS staff inquiries or written requests for additional information within five business days of a request pertaining to a complaint or administrative hearing to include, but not be limited to, eligibility or service complaints and hearings.

- (3) Upon reasonable notice, CDDP staff shall cooperate in any administrative hearing as a witness at any stage of the hearing or any other legal matters arising from their role including, but not limited to, eligibility or service complaints.

e. Funding for Case Management Services.

- (1) Case Management funding is based upon the amount of qualified billable RFFS Claims submitted by the Provider of Case Management Services, up to the monthly amount authorized by the CDDP's Case Management service authorization.
- (2) Case Management funding is paid to the CDDP after the Claims processing cycle on the 15th of the month based on Title XIX eligible Claims cleared since the first of the month. Title XIX eligible Claims made for the previous month(s) that have cleared but have not previously been paid, will also be processed for payment at this time up to the monthly authorized amount. General fund Claims submitted for the time period between the 1st of the month and the 15th of the month will be held until the next monthly Claims processing cycle described in 12.e.(3) of this Exhibit B Part 2.
- (3) Case Management funding is paid to CDDP after the Claims processing cycle on the last day of the month based on:
 - (a) If any funds remain or are available in the monthly authorized amount;
 - (b) Title XIX eligible Claims cleared since the 15th will be processed and paid first;
 - (c) Title XIX eligible Claims cleared but not yet paid for the previous month(s) will be processed and paid second up to the maximum monthly authorized amount;
 - (d) If any funds remain or are available for the month after payment of the Title XIX eligible Claims, general fund Claims that have cleared that month will be processed and paid third; and
 - (e) General fund Claims cleared but not yet paid for the previous month(s) will be processed and paid fourth until the monthly authorized amount is exhausted.
- (4) ODHS is not obligated to provide funding for any Case Management Services that are not properly documented in Individual case files, or are not properly reported through eXPRS within 12 months of the Case Management Service, and by the date 60 calendar days after the earlier of expiration or termination of the Agreement; termination of ODHS' obligation to provide funding for Case Management Services; or termination of CDDP's obligation to include the Program Area in which the Case Management Services are provided.

- (5) Provider of Case Management Services shall resolve all Provider Liability Accounts (PLA) as shown in eXPRS relating to Case Management Services, by ensuring the PLA ending balance is zero, within 60 calendar days after the earlier of expiration or termination of the Agreement with ODHS; termination of ODHS' obligation to provide funding for Case Management Services; or termination of CDDPs obligation to include the Program Area in which the Case Management Services are provided.
- (6) Each Individual receiving Case Management Services must have an active, accepted CPA within eXPRS for the period the Case Management Services are provided to the Individual in order for Provider to submit a qualifying Claim.
- (7) For each unit of Case Management Services reported in eXPRS as delivered to an Individual, a qualifying billable Case Management Service must have been delivered to the Individual and sufficiently documented in progress notes within the Individual's file. ODHS will not provide funding for more than one billable Case Management Service or unit per Individual per day. CDDP will void or back out any submitted claims that are determined not to meet Case Management Services.

13. Abuse Investigation Services.

- a. Abuse Investigation Services for adults include responding to abuse allegations, accessing protective services in coordination with Case Management Entities, and assuring that the abuse allegations are appropriately investigated and reported. CDDP must operate a Community Developmental Disabilities Program, or have a service agreement with another CDDP, to perform abuse investigation activities. The abuse investigator specialist serves as the "designee" of ODHS under ORS 430.731, 430.735 to 430.765.
- b. **General Performance Requirements.**
 - (1) When providing Abuse Investigation Services for ODHS, CDDP will:
 - (a) Comply with OAR Chapter 411, Division 320 "Community Developmental Disabilities Program", as such rules may be revised from time to time.
 - (b) Comply with ORS 430 and OAR Chapter 407, Division 045 "Office of Training, Investigations and Safety "(OTIS), as such statutes and rules may be revised from time to time.
 - (c) Comply with ODHS policies and procedures and ODHS Transmittals requesting action or providing policy information.
 - (2) CDDP must employ individuals as abuse investigators or have an agreement with an identified CDDP or Subcontractor, to perform abuse investigation activities which include the provision of Abuse Investigation Services in a Program Area and who will be referred to as the "Abuse Investigator".

- (3) CDDP or Subcontractor shall employ, provide training, and require attendance to mandatory training for Abuse Investigators indicated in the Workload Model for Abuse Investigation Services within the funding allotted.
- (4) Abuse Investigators must use a State approved information system, forms, and procedures for acting on mandatory abuse reports, assessing protective services, and conducting investigations for documentation of findings regarding abuse allegations.
- (5) Abuse Investigators must complete the abuse investigation duties within the timelines outlined in rule. Any variance to the investigation rules in OAR Chapter 407, Division 45 “Office of Training, Investigations and Safety” must be reviewed and approved by OTIS.
- (6) Abuse Investigators must participate in quarterly meetings held by OTIS.
- (7) Upon reasonable notice, Abuse Investigators must participate in a contested case matter, including as a witness, at any stage of the hearing or any other legal matters arising from their role.
- (8) Abuse Investigators must participate in the county multidisciplinary team relative to ORS 430.739 “County multidisciplinary teams; protocols; reports” and provide any requested data and information needed to comply with ORS 403.739 and OAR Chapter 407, Division 45.
- (9) Per ORS 430.731(3) a person employed by a CDDP as a case manager may not serve as the lead investigator of an allegation of abuse of a person with a developmental disability.
- (10) A CDDP may identify a back-up Abuse Investigator who is also a case manager or Services Coordinator. Back-up Abuse Investigators must complete the Investigator Core Competencies training as delivered by OTIS. A back-up Abuse Investigator may be used in a situation where the primary Abuse Investigator is absent or temporarily unavailable. If a case manager is the back-up Abuse Investigator, the case manager cannot serve as the investigator for an allegation involving an adult they case manage.
- (11) In circumstances where a CDDP may have a potential conflict of interest, OTIS should be consulted as prescribed in OAR Chapter 407, Division 45. A conflict of interest is limited to cases where a CDDP employee is the accused person, there is a familial relationship to the investigator, or the allegation is a highly sensitive issue requiring outside investigation.
 - (a) The Abuse Investigator must consult with OTIS to confirm the conflict of interest and then coordinate the out of CDDP investigation with the assigned OTIS special investigator.
 - (b) OTIS, in consultation with the Abuse Investigator, will determine if there is an actual or potential conflict of interest that cannot be remedied through assignment to another abuse investigation provider.

- (c) OTIS will provide a written response regarding the outcome of the formal request to the original investigator within 24 hours.

c. Special Reporting Requirements.

Upon ODHS’ written request, a CDDP will provide data and information relative to the implementation of Abuse Investigation Services within the time specified by ODHS in its request to CDDP.

d. Billing and Payment Procedures.

- (1) ODHS will provide CDDP with funding for Abuse Investigation Services by entering a Service Element Prior Authorization (SEPA) and Provider Prior Authorization (PPA) based on the approved CDDP Workload Model or its funding level for FTE staff.
- (2) ODHS will disburse funding for Abuse Investigation Services, for a specified period of time, in an amount equal to the monthly amount set forth in the accepted SEPA and approved in the PPA, as such amounts may be updated from time to time, subject to the following:
 - (a) If CDDP fails to deliver Abuse Investigation Services for part of a month, the funding for Abuse Investigation Services for that month will be prorated and ODHS may reduce future disbursements of Abuse Investigation funds accordingly.
 - (b) If requested by ODHS, CDDP shall also accept an appropriate SEPA Adjustment to amend funding for Abuse Investigation Services as a result of a CDDP’s failure to deliver the Abuse Investigation Services for a full month.

14. Centralized Abuse Management System Procedures.

- a. CDDP must record all serious incidents, complaints of abuse, death reviews, and abuse investigations in the ODHS approved Centralized Abuse Management (CAM) System.
- b. **Abuse Data Measures.**

#	Metric	Metric Explanation
(1)	Timeliness of First Contact	Abuse investigations meeting applicable response times according to OAR.
(2)	Investigation Cycle Time	Number of days from opening an investigation to the date the investigation is closed.
(4)	Screening Timelines	Allegations screened in compliance with OAR timelines.
(5)	Caseload Ratio	Number of investigations opened per abuse investigator.

(6)	Re-abuse Rates	Number of victims with multiple substantiations of abuse.
(7)	Core Competency Training	Number of new investigators who complete Core Competency Training within 6 months of hire.
(8)	Annual Training Hours	Number of abuse investigators who complete 20 hours of annual training.
(9)	Serious Incidents and Investigations	Number of investigations with related serious incidents.

c. Serious Incident Measures.

#	Metric	Metric Explanation
(1)	Serious Incidents Entered	Number of serious incidents meeting applicable entry timelines.
(2)	Serious Incidents Closed	Number of serious incidents meeting closure timelines.
(3)	Serious Incident Recommended Actions	Number of serious incidents recommended actions with documented outcome.
(4)	Serious Incident Types	Number of serious incidents reported.

d. ODHS in coordination with CDDP will gather baseline data and establish appropriate compliance targets for the identified measures.

e. CDDP will be responsible for gathering data, outlining patterns and trends, and reporting on compliance within the agreed upon measures.

f. At a minimum, CDDP will submit quarterly data reports on an approved ODHS template.

g. The quarterly data reports and the trend reports described below will be provided to IncidentMgmt.TechAssistance@dhsosha.state.or.us .

h. ODDS will outline the reporting timelines for the CDDP:

i. Quarterly Trend Reports.

- (1) A comparison of actual trend results versus trend targets for the current period and at least the two previous periods.
- (2) A proposed action plan for each measure not in compliance with the agreed upon compliance targets.
- (3) An action plan will include:
 - (a) An analysis/statement of the root causes/reasons for not meeting the compliance targets.

- (b) A description of solutions identified and recommended by the CDDP in order to meet the agreed measures.
- (c) A timeframe for implementing the solutions.

EXHIBIT B PART 3

Financial Terms and Conditions

1. Disbursement of Payments.

- a. Disbursement Generally.** Subject to the conditions precedent to disbursement set forth in subsection c. below, ODHS shall disburse the payments described in the SEPA to CDDP and or Subcontractors in accordance with the procedures set forth in this Section 1 and, as applicable, in Exhibit B Part 2 “Service Element Standards and Procedures”. Disbursement procedures may vary by DD Service.
- If County subcontracts any or all Service(s) covered under this Agreement, County must forward all funds related to the Services subcontracted to Subcontractor within ten business days of receipt from ODDS. If the entire CDDP program is subcontracted County cannot retain any of the funding.
- b. Disbursements Remain Subject to Recovery.** All disbursements of funds to CDDP and or Subcontractors under this Agreement remain subject to recovery from CDDP, in accordance with Section 7 below, as a Misexpenditure.
- c. Conditions Precedent to Disbursement.** ODHS’ obligation to disburse payments to CDDP and or Subcontractors under this Agreement is subject to satisfaction, with respect to each disbursement, of each of the following conditions precedent:
- (1) No CDDP default as described in Exhibit E “Standard Terms and Conditions” has occurred.
 - (2) CDDP’s representations and warranties set forth in Section 4 “Representations and Warranties” of Exhibit E “Standard Terms and Conditions” are true and correct on the date of disbursement with the same effect as though made on the date of disbursement.

2. Use of Funding.

- a.** CDDP shall use all funds disbursed to CDDP under this Agreement solely to cover actual Allowable Costs reasonably and necessarily incurred to deliver DD Services during the term of this Agreement. Depositing these contracted funds into a single pool, making one dollar indistinguishable from another, is prohibited and subject to audit. However, CDDP may deposit funds from different sources, including the funds from ODHS, into a single account if the different funding streams are accounted for and trackable, sometimes referred to as “braiding.”
- b.** CDDP may use funds for costs that are incurred for common or joint purposes that benefit more than one cost objective (i.e. for the community developmental disabilities program services provided by this agreement and one or more other programs) and that cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. Funds may be used for such costs (commonly referred to as indirect costs or overhead costs) subject to the following requirements:

- (1) ODHS will allow indirect charges at the County's federally-approved Negotiated Indirect Cost Rate if the county provides proof of such a rate.
- (2) If the County does not have a federally-approved rate, CDDP may provide cost documentation for the community developmental disabilities program services and ODHS will negotiate a cost rate with the CDDP not to exceed the ODHS' rate provided on the budget models.
- (3) If CDDP does not have a federally approved Negotiated Indirect Cost Rate and does not choose to negotiate a rate with ODHS, CDDP may use a 10% de minimis rate for costs as described in this Section 2.b. No documentation is required to justify the 10% de minimis cost rate.

Costs must be consistently charged as either indirect or direct costs but may not be double charged or inconsistently charged as both.

3. Effect of Amendments Reducing Funding.

- a. If CDDP and ODHS amend the SEPA to reduce the amount of funding awarded for a particular DD Service, CDDP is not required by this Agreement to utilize other CDDP funds to replace the funds no longer received under this Agreement as a result of the amendment and CDDP may, from and after the date of the SEPA, reduce the quantity of that DD Service included in its CDDP commensurate with the amount of the reduction in funds awarded for that DD Service.
- b. If a CDDP receives Local Match funding to recoup the reduced funding, DD Services may not be reduced. Nothing in the preceding sentence shall affect CDDP's obligations under this Agreement with respect to payments disbursed by ODHS under this Agreement or with respect to DD Services delivered.

4. Audit Requirements.

- a. CDDP operated by a non-county Subcontractor, is required to submit to ODHS an Audit within 120 calendar days of the end of the previous fiscal or biennial period. Audits must:
 - (1) Cover the entire previous fiscal or biennial period and include all federal and state funds provided to CDDP as part of this Agreement.
 - (2) Must be submitted directly to ODDS.Contracts@dhsosha.state.or.us by the auditing agency or a Certified Public Accountant (CPA).
- b. Failure to submit a proper Audit within 120 calendar days of the end of the previous fiscal or biennial period may result with ODHS withholding further funding to CDDP until Audit is submitted to ODHS. ODHS may allow for one 60-calendar day extension to this if the CDDP can document due diligence in attempting to meet the requirements of this subsection prior to the end of the 120-calendar day period.

5. Carryover.

- a. Funds received by CDDP for the Service Elements Eligibility and Licensing and Abuse Investigations that remain available at the close of a State fiscal year or a

biennium, may be retained by CDDP upon ODHS review and approval (“Carryover”). The amount or percentage of funding to be retained by CDDP shall be determined by ODHS. Any amount of Carryover funds authorized by ODHS is to be used by CDDP in support of DD Services provided to Individuals as approved by ODHS and may not be co-mingled with other County programs or departments.

- b.** Carryover funds retained from a previous biennium must be reported to ODHS to the cau.invoice@dhsosha.state.or.us email using the form provided by ODHS. The report must include the following:
 - (1) Amount of awarded funds or other compensation paid directly to the CDDP under this Agreement.
 - (2) A written description of how the Carryover funds will be used by CDDP to increase DD Services or cover costs of DD Services under the same Service Element for which the funds were awarded to CDDP in the previous biennium.

6. Process for Settlement.

CDDP shall cooperate with ODHS during the biennial, or any interim, Settlement process for those DD Services where funds are paid directly to CDDP or as defined in Exhibit B Part 2 of this Agreement.

- a.** ODHS will analyze the ODHS paid versus CDDP expended funds, for each DD Service funded under this Agreement directly to CDDP, for the timeframe of the Settlement process. Upon completion of the ODHS analysis, ODHS will notify CDDP via an e-mail addressed to the CDDP Administrator of the results of its Settlement process (“Settlement Notification”). The Settlement Notification will include the following:
 - (1) Settlement Cover Letter, and
 - (2) Initial Settlement Report.
- b.** CDDP shall have 90 calendar days from the date of the Settlement Notification to respond with corrections, additional information, or acceptance of the Settlement amount as presented by ODHS.
- c.** CDDP shall submit any additional information or corrections on the spreadsheet provided in the Initial Settlement Report per the instructions in the Settlement packet, as well as any documentation needed to support a disputed amount (the “Response File”).
- d.** ODHS shall review and respond to CDDP’s Response File within 120 calendar days of receipt of the Response File. ODHS shall clearly identify in a revised Settlement Notification, emailed to the CDDP Administrator, which items ODHS has accepted or denied.

- e. Any additional backup documentation provided by CDDP is subject to 42 CFR §447.45 Medicaid Claims which allows Medicaid match for new Claims if paid within 12 months from date of Service and seven quarters plus current quarter for corrections to existing Claims.
- f. If ODHS and CDDP continue to disagree as to the Settlement amount, the parties may agree to further appropriate dispute resolution processes, subject to Exhibit E Section 20 “Resolution of Disputes” of this Agreement.
- g. The final Settlement Notification sent by ODHS to CDDP shall indicate the amount and the expected date of payment to ODHS by way of a check from CDDP or recovery through future payments in the manner described in this Exhibit B Part 3. If funds are to be paid to CDDP, the final Settlement Notification shall indicate the amount and the expected date of payment by check from ODHS. Any disputes to the final Settlement Notification shall be resolved through the appeals processes as outlined in this Exhibit B Part 3.

7. Recovery of Funding for Misexpenditure.

- a. If ODHS identifies a Misexpenditure of moneys disbursed to CDDP under this Agreement, ODHS shall provide CDDP by e-mail with written notice thereof and ODHS and CDDP shall engage in the process described in subsection 7.b. below.
- b. From the date of the notice of Misexpenditure, CDDP shall have the lesser of (1) 60 calendar days, or (2) if a Misexpenditure relates to a federal government request for reimbursement, 30 calendar days fewer than the number of days (if any) that ODHS has to appeal a final written decision from the federal government, to either:
 - (1) Make a payment to ODHS of the full amount of the noticed Misexpenditure identified by ODHS; or
 - (2) Notify ODHS that CDDP wants to repay the amount of the noticed Misexpenditure from future payments pursuant to subsection 7.d. below; or
 - (3) Notify ODHS that it wants to engage in the applicable appeal process set forth in subsection 7.c. below.

c. Appeal Process for Misexpenditure.

If CDDP notifies ODHS that it wants to engage in an appeal process with respect to a noticed Misexpenditure, the parties shall comply with the following procedures, as applicable.

- (1) Appeal from ODHS-Identified Misexpenditure.

If ODHS’ notice of Misexpenditure is based on a Misexpenditure solely of the type described in Section 34 b. or c. of Exhibit A “Definitions”, CDDP and ODHS shall engage in the process described in this subsection to resolve a dispute regarding the noticed Misexpenditure.

 - (a) CDDP and ODHS shall engage in non-binding discussions to give CDDP an opportunity to present reasons why it claims that there is

no Misexpenditure or that the amount of the Misexpenditure is different than the amount identified by ODHS; and to give ODHS the opportunity to reconsider its notice of recovery.

- (b) CDDP and ODHS may negotiate an appropriate apportionment of responsibility for the recovery of a Misexpenditure. At CDDP's request, ODHS will meet and negotiate with the CDDP in good faith concerning appropriate apportionment of responsibility for recovery of a Misexpenditure. In determining an appropriate apportionment of responsibility, CDDP and ODHS may consider any relevant factors. An example of a relevant factor is the extent to which either party contributed to an interpretation of a statute, regulation or rule prior to the expenditure that was officially reinterpreted after the expenditure.
 - (c) If ODHS and CDDP reach agreement on an amount owed to ODHS, CDDP shall, promptly repay that amount to ODHS by issuing payment to ODHS or direct ODHS to withhold future payments pursuant to subsection 7 d. below.
 - (d) If ODHS and CDDP continue to disagree as to whether there has been a Misexpenditure or as to the amount owed, the parties may agree to further appropriate dispute resolution processes, including, subject to Department of Justice and CDDP Counsel approval, binding arbitration.
- (2) Appeal from Federal-Identified Misexpenditure.
- (a) If ODHS' notice of Misexpenditure is based on a Misexpenditure of the type described in Section 34 a. of Exhibit A "Definitions" and the relevant federal agency provides a process either by statute or administrative rule to appeal the determination of improper use of Federal Funds, the notice of disallowance or other federal identification of improper use of funds, and if the disallowance is not based on a federal or state court judgment founded in allegations of Medicaid Fraud or abuse, then CDDP may, prior to 30 calendar days prior to the applicable federal appeals deadline, request that ODHS appeal the determination of improper use, notice of disallowance, or other federal identification of improper use of funds, in accordance with the process established or adopted by the federal agency.
 - (b) If CDDP so requests that ODHS appeal the determination of improper use of Federal Funds, federal notice of disallowance, or other federal identification of improper use of funds, the amount in controversy shall, at the option of CDDP, be retained by CDDP or returned to ODHS pending the final federal decision resulting from the initial appeal.

- (c) If CDDP does request, prior to the deadline set forth in (2) (a) above, that ODHS appeal, ODHS shall appeal the determination of improper use, notice of disallowance or other federal identification of improper use of funds in accordance with the established process and shall pursue the appeal until a decision is issued by the Departmental Grant Appeals Board of the Department of Health and Human Services (the “Grant Appeals Board”) pursuant to the process for appeal set forth in 45 C.F.R. Subtitle A, Part 16, or an equivalent decision is issued under the appeal process established or adopted by the federal agency. CDDP and ODHS shall cooperate with each other in pursuing the appeal.
- (d) If the Grant Appeals Board or its equivalent denies the appeal, then either CDDP, ODHS, or both may, in their discretion, pursue further appeals. Regardless of any further appeals, within 90 calendar days of the date the federal decision resulting from the initial appeal is final, CDDP shall repay to ODHS the amount of the noticed Misexpenditure (reduced, if at all, as a result of the appeal) by issuing payment to ODHS or by directing ODHS to withhold future payments pursuant to subsection 7 d. below. To the extent that CDDP retained any of the amounts in controversy while the appeal was pending, CDDP shall pay to ODHS the interest, if any, charged by the federal government on such amount.
- (e) If the relevant federal agency does not provide a process either by statute or administrative rule to appeal the determination of improper use of Federal Funds, the notice of disallowance or other federal identification of improper use of funds or CDDP does not request that ODHS pursue an appeal 30 calendar days prior to the applicable federal appeals deadline, and if ODHS does not appeal, then within 90 calendar days of the date the federal determination of improper use of Federal Funds, the federal notice of disallowance, or other federal identification of improper use of funds is final, CDDP shall repay to ODHS the amount of the noticed Misexpenditure by issuing a payment to ODHS or by directing ODHS to withhold future payments pursuant to subsection 7 d. below.
- (f) If CDDP does not request that ODHS pursue an appeal of the determination of improper use of Federal Funds, the notice of disallowance, or other federal identification of improper use of funds, prior to 30 calendar days prior to the applicable federal appeals deadline, but ODHS nevertheless appeals, CDDP shall repay to ODHS the amount of the noticed Misexpenditure (reduced, if at all, as a result of the appeal), within 90 calendar days of the date the federal decision resulting from the appeal is

final, by issuing payment to ODHS or by directing ODHS to withhold future payments pursuant to subsection 7 d. below.

(g) If the Misexpenditure was expressly authorized by a ODHS rule or a ODHS writing that applied when the expenditure was made, but was prohibited by federal statutes or regulations that applied when the expenditure was made, CDDP will not be responsible for repaying the amount of the Misexpenditure to ODHS, provided that:

- i. Where post-expenditure official reinterpretation of federal statutes or regulations results in a Misexpenditure, CDDP and ODHS will meet and negotiate in good faith an appropriate apportionment of responsibility between them for repayment of the Misexpenditure.
- ii. For purposes of this section, a ODHS writing must interpret this Agreement or a ODHS rule and be signed by the Director of ODHS or by one of the following ODHS officers concerning DD Services:

Director of the Office of Developmental Disabilities Services;

Deputy Director of the Office of Developmental Disabilities Services;

Chief Operating Officer of the Office of Developmental Disabilities Services.

ODHS shall designate alternate officers in the event the offices designated in the previous sentence are abolished. Upon CDDP request, ODHS shall notify CDDP of the names of individual officers with the above titles. ODHS shall send ODHS writings described in this paragraph to CDDP by mail and e-mail and to CDDP's directors by e-mail.

- iii. The ODHS writing must be in response to a request from the CDDP for expenditure authorization, or a statement intended to provide official guidance to the CDDP or counties generally, for making expenditures under this Agreement. The ODHS writing must not be contrary to this Agreement or contrary to law or other applicable authority that is clearly established at the time of the writing.
- iv. If the ODHS writing is in response to a request from CDDP for expenditure authorization, the request must be in writing and signed by the director of a CDDP department with authority to make such a request or by CDDP Counsel. It must identify the supporting data, provisions of

this Agreement and provisions of applicable law relevant to determining if the expenditure should be authorized.

- v. A ODHS writing expires on the date stated in the writing, or if no expiration date is stated, upon expiration of this Agreement. An expired ODHS writing continues to apply to CDDP expenditures that were made in compliance with the writing and during the term of the writing.
- vi. ODHS may revoke or revise a ODHS writing at any time if it determines in its sole discretion that the writing allowed expenditure in violation of this Agreement or law or any other applicable authority. However, ODHS is not responsible for a Misexpenditure that was based on a ODHS writing that was effective at the time of the Misexpenditure.
- vii. The ODHS rule or the ODHS writing does not authorize an expenditure that this Agreement prohibits.

d. Recovery of Misexpenditure from Future Payments.

- (1) To the extent that ODHS is entitled to recover a Misexpenditure pursuant to subsection 7 b. above, ODHS may recover the Misexpenditure by offsetting the amount thereof against future amounts owed to County by ODHS, including, but not limited to, any amount owed to CDDP by ODHS under this Agreement, or any amount owed to County by ODHS under any other contract or agreement between County and ODHS, present or future.
- (2) ODHS shall provide the CDDP with written notice of its intent to recover the amount of the Misexpenditure as set forth in this section from amounts owed CDDP by ODHS, and ODHS shall identify the amounts owed by ODHS to CDDP which ODHS intends to offset to recover the Misexpenditure amount, including the contracts or agreements, if any, under which the amounts owed arose and those other contracts or agreements from which ODHS wishes to deduct payments.
- (3) CDDP shall then have 14 calendar days from the date of ODHS' notice in which to request the deduction be made from other amounts owed to County by ODHS and identified by CDDP. ODHS shall comply with CDDP's request for alternate offset.
- (4) In the event that ODHS and the CDDP are unable to agree on which specific amounts, owed to CDDP by ODHS, ODHS may offset in order to recover the amount of the Misexpenditure, then ODHS may select the particular contracts or agreements between ODHS and CDDP and amounts from which it will recover the amount of the Misexpenditure, after providing notice to CDDP, and within the following limitations:
 - (a) ODHS shall first look to amounts owed to CDDP (but unpaid) under this Agreement.

- (b) If that amount is insufficient, then ODHS may look to any other amounts currently owing or owed in the future to County by ODHS.
- (c) In no case, without the prior consent of County, shall ODHS deduct from any one payment due County under the contract or agreement from which ODHS is offsetting funds an amount in excess of twenty-five percent (25%) of that payment.
- (d) ODHS may look to as many future payments as necessary in order to fully recover the amount of the Misexpenditure.

8. Additional Settlement and Misexpenditure Provisions.

- a. CDDP shall cooperate with ODHS in the Settlement process throughout the Agreement term and with the Agreement Settlement process upon termination or expiration of the Agreement.
- b. ODHS’ right to recover through Settlement and the Misexpenditure process from CDDP under this Agreement is not subject to or conditioned on CDDP’s recovery of any money from any other entity.
- c. If the exercise of ODHS’ right to offset under this provision requires CDDP to complete a re-budgeting process, nothing in this provision shall be construed to prevent CDDP from fully complying with its budgeting procedures and obligations, or from implementing decisions resulting from those procedures and obligations.
- d. Nothing in this provision shall be construed as a requirement or agreement by CDDP to negotiate and execute any future contract with ODHS.
- e. Nothing in this Section 8 shall be construed as a waiver by either party of any process or remedy that might otherwise be available.

9. Resolution of Disputes over Additional Funds Owed CDDP After Termination or Expiration.

If, after termination or expiration of this Agreement, CDDP believes that ODHS disbursements of funds under this Agreement for a particular DD Service are less than the amount of funds that ODHS is obligated to provide to CDDP under this Agreement for that DD Service, as determined by the Agreement Settlement, and in accordance with the applicable funding calculation methodology, CDDP shall provide ODHS with written notice thereof. ODHS shall have 90 calendar days from the effective date of CDDP's notice to pay CDDP in full or notify CDDP that it wishes to engage in a dispute resolution process. If ODHS notifies CDDP that it wishes to engage in a dispute resolution process, CDDP and ODHS’ Agreement Administrator shall engage in non-binding discussion to give ODHS an opportunity to present reasons why it believes that it does not owe CDDP any additional funds or that the amount owed is different than the amount identified by CDDP in its notices, and to give CDDP the opportunity to reconsider its notice. If ODHS and CDDP reach agreement on the additional amount owed to CDDP, ODHS shall promptly pay that amount to CDDP. If ODHS and CDDP continue to disagree as to the amount owed, the parties may agree to further appropriate

dispute resolution processes, including, subject to Department of Justice and CDDP Counsel approval, binding arbitration. Nothing in this Section 9 shall preclude CDDP from raising underpayment concerns at any time prior to termination or expiration of this Agreement.

EXHIBIT C
Special Terms and Conditions

1. CDDP Authorization of Client Services.

- a. CDDP shall submit a service authorization for the DD Services CDDP is responsible to authorize that are identified in Exhibit B Part 2 Section 1 “Provision of Services” of this Agreement.
- b. CDDP shall upload all applicable documentation supporting the service authorization and rates within eXPRS. Supporting documentation does not include the ISP.
- c. CDDP shall follow current Service Element Standards and Procedures as identified in Exhibit B Part 2 of this Agreement in establishing a service authorization.
- d. CDDP shall end all applicable service authorizations within 10 business days of the date the Individual exits a DD Service or Services.
- e. CDDP shall not authorize a Provider to begin or continue delivery of Services if the Provider’s enrollment in eXPRS and any required credentials for the Service are incomplete or have lapsed.

2. ODHS Approval of CDDP Authorized Services.

- a. ODHS may randomly review CDDP authorizations and associated documentation for DD Services. If ODHS has questions or finds errors in CDDP submitted documentation, ODHS shall work with CDDP and any other lawful parties to remedy the outstanding issues.
- b. ODHS reserves the option, in its sole discretion, to require CDDP to terminate a plan or any element of a plan entered into POC upon determining that the DD Services were authorized outside of the requirements for the Service; or the plan procedure code was affected by statute, rules, or ODHS policies or procedures; or the Services were not authorized under this Agreement.

3. Appointment of CDDP Administrator.

The CDDP employee, identified by the CDDP via e-mail to ODHS as the “CDDP Administrator”, is authorized to:

- a. Amend the Service Element Prior Authorization (SEPA), on behalf of CDDP, and amend this Agreement by execution and delivery of amendments in the name of CDDP in hard copy, electronically, or, with respect to the SEPA only, through electronic acceptance of SEPA Adjustments in eXPRS.
- b. Enable, on behalf of CDDP, the disbursement of funds under this Agreement that is described in the SEPA, through submission and modification of service authorizations, either electronically through eXPRS or by submission of hard copy documents to ODHS; and to authorize Providers, to submit Disbursement

Claims on behalf of CDDP, either electronically through eXPRS or by submission of hard copy documents to ODHS.

- c.** Authorize others, including but not limited to CDDPs subcontracting with a County, to take one or more of the foregoing actions on behalf of CDDP except for authorizing amendments to this Agreement and SEPAs.

EXHIBIT D

General Terms and Conditions

1. **Operation of CDDP.** County shall operate or subcontract for the operation of a CDDP during the term of this Agreement. If County wishes to subcontract the operation of a CDDP, the Subcontract must comply with the terms of this Agreement, including but not limited to, Exhibit E, Section 21. If County subcontracts the entire CDDP duties, County will be obligated to pass all funds received for the CDDP to the Subcontractor.
2. **Usage of Funds.** County must hire as many FTEs as possible per the funding allocated within the Workload Model. County shall employ and provide training for all employees and meet the requirements documented in this Agreement, Oregon Revised Statutes, and Oregon Administrative Rules. County shall operate their CDDP within the applicable federal and state rules, regulations, and the terms of this Agreement. All funds received by the County must be used exclusively for the purposes of conducting DD Services.
3. **Reporting Requirements.**

County shall report the FTEs utilized for the Service Elements Eligibility and Licensing, Case Management including Local Match, and Abuse Investigations, if applicable, to ODHS semi-annually or when requested by ODHS. In addition to the FTEs, this report shall include how the FTE's are calculated. ODHS may prescribe the format to be used for this reporting. In addition, County shall provide the days and hours of operation of the CDDP in Attachment #1 as described in Section 5 of Exhibit B Part 1.
4. **Subcontracts.**
 - a. If County chooses to subcontract any or all CDDP Services under this Agreement County must submit a Notice of Intent to Subcontract to odds.contract@dhsosha.state.or.us for review prior to subcontracting. The notice must include, but is not limited to, the name of proposed Subcontractor, qualifications, and services to be subcontracted.
 - b. County shall not permit any person or entity to be a Subcontractor unless the person or entity holds all certificates, authorizations and other approvals as identified in the applicable Service Element Standards and Procedures and OARs.
 - c. If County subcontracts a CDDP Service, or portion thereof, from a Subcontractor, the Subcontract with County must be in writing and contain each of the provisions set forth in Exhibit G Part 1, "Required Subcontractor Provisions" in substantially the form set forth therein, in addition to any other provisions that must be included to comply with applicable law, that must be included in a Subcontract with County under the terms of this Agreement, or that are necessary to implement DD Service delivery in accordance with the applicable Service Element Standards and Procedures and any special conditions.
 - d. County shall maintain an originally executed copy of each Subcontract at its office and shall furnish a copy of any Subcontract to DHS within 90 days of the execution of this Agreement, 90 days of any Amendment to this Agreement, or

upon request. Subcontracts must be submitted to odds.contracts@dhsosha.state.or.us.

- e. In accordance with ORS § 430.670 (3), any private corporation that contracts with a county or the Department of Human Services to operate a developmental disabilities program shall provide an opportunity for competition among private care providers when awarding Subcontracts for provision of services described in ORS 430.630 (1) to (3) and 430.664.
5. **ODHS Reports.** To the extent resources are available to ODHS to prepare and deliver the information, ODHS shall, during the term of this Agreement, provide County with summary reports from data and other Individual data reported to ODHS under this Agreement.
6. **Technical Assistance.** During the term of this Agreement, ODHS shall provide technical assistance to County in the delivery of DD Services to the extent that funding is allocated to ODHS for this purpose. If the provision of technical assistance to County concerns a Provider or Subcontractor, ODHS may require, as a condition to providing the assistance, that County take all reasonably necessary action with the Provider or Subcontractor to facilitate the technical assistance.
7. **Amendments Proposed by ODHS.** Subject to Exhibit E Section 27 “Amendments; Waiver; Consent”, County shall review all pending Agreement amendments prepared and presented to County by ODHS by e-mail and act within 60 calendar days of County’s receipt of pending amendment. If County chooses to accept an amendment, County shall follow ODHS’ procedures for signing and returning the amendment to ODHS. If County chooses to reject an amendment, County must submit an e-mail detailing the reason for the rejection to County’s assigned ODHS Agreement Administrator.
8. **eXPRS Administration.**
 - a. The County’s contract number in eXPRS is 157818.
 - b. **Designation of Direct Contract Chief Security Officer.**
 - (1) The Case Management Entity Administrator may request in writing to designate to ODHS any individual(s) authorized to perform the duties of the security role, in compliance with Exhibit H Part 1 “Privacy and Security Agreement”, currently titled Direct Contract Chief Security Officer (DCCSO), or as such role may be renamed by ODHS.
 - (2) Upon approval of the request, ODHS will send the DCCSO a UserID for accessing eXPRS. If County wishes to designate a substitute DCCSO, the CME Administrator may do so by subsequent written notice to ODHS.
 - (3) The individual designated as the DCCSO is responsible to ensure that County is in compliance with the Privacy and Security Agreement requirements described in Exhibit H Part 1 of this Agreement.
 - (4) If the CME Administrator does not designate another County employee as the DCCSO, the CME Administrator will be designated as the DCCSO and will act as the DCCSO on behalf of the County.

c. Responsibilities of Direct Contract Chief Security Officer.

- (1) The DCCSO shall assign, maintain, and revoke all eXPRS user account securities for County staff.
 - (a) The DCCSO may only assign, maintain, or revoke user account securities upon receipt of the ODHS eXPRS User Enrollment Form signed by the ODHS manager.
 - (b) ODHS eXPRS User Enrollment Form must be maintained by the County.
- (2) The DCCSO shall ensure County staff are in compliance with all eXPRS policies and procedures.

d. Revocation of UserIDs and SEPA Pass Phrase by ODHS or County.

- (1) ODHS may revoke a UserID or SEPA Pass Phrase if ODHS determines that revocation is reasonably necessary for technical or security reasons.
- (2) A UserID or SEPA Pass Phrase may be revoked if ODHS or the County determines:
 - (a) The UserID or SEPA Pass Phrase was not properly issued or created or was obtained by fraud.
 - (b) The UserID or SEPA Pass Phrase has or may have been lost, disclosed, compromised, or subjected to unauthorized use.
 - (c) The County has revoked or modified the authorization of the CME Administrator.
 - (d) County is in default under this Agreement.
- (3) If ODHS revokes a UserID or SEPA Pass Phrase under this Section 8, ODHS will notify the County promptly thereafter.
- (4) ODHS may, without notice to the County, revoke all UserIDs and SEPA Pass Phrases upon termination or expiration of this Agreement.

9. Alternative Formats and Translation of Written Materials, Interpreter Services.

- a.** In connection with the delivery of Service Element services, County shall make available to Client, without charge, upon the Client's reasonable request:
- (1) All Written Materials related to the Services provided to the Individual in alternate formats.
 - (2) All Written Materials related to the Services provided to the Individual in the Individual's preferred format and or language.
 - (3) Oral interpretation services related to the Services provided to the Individual in the Individual's preferred format and or language.
 - (4) Sign language interpretation services and telephone communications access services related to the Services provided to the Individual.

- b. For purposes of the foregoing, “written materials” means materials created by County, in connection with the all Services being provided to the Individual. 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 an Individual, without charge to the Individual, in the prevalent non-English language(s), including braille, within the County’s Program Area.
- c. ODHS shall be responsible for making its forms and materials available, without charge to the Individual or County, in the prevalent non-English language(s), including braille, within the County’s Program Area. ODHS will provide translation of written materials and oral interpretation, including American Sign Language (ASL) for specific Services outlined in the expenditure guidelines.
- d. Nothing in this Agreement shall cause or require County or ODHS to act in violation of state or federal constitutions, statutes, regulations, or rules. The parties intend this limitation to apply in addition to any other limitation in this Agreement, including limitations in this Agreement.
- e. If County’s staff provides oral interpretation and or translation to Individuals, County will have policies and procedures that address identifying language proficiency of County’s staff.
- f. ODDS reserves the right to review County’s Written Materials.

10. Confidentiality of Information.

a. Client Information.

- (1) All information as to personal facts and circumstances obtained by the County on the Client (“Client Information”) shall be treated as privileged communications, shall be held confidential, and shall not be divulged without the written consent of the Client, his or her guardian, or the responsible parent when the Client is a minor child, or except as required by other terms of this Agreement. Nothing prohibits the disclosure of information in summaries, statistical, or other forms which does not identify particular individuals.
- (2) The use or disclosure of Client Information shall be limited to persons directly connected with the administration of this Agreement. Confidentiality policies shall be applied to all requests from outside sources.
- (3) If County, or any of its officers, directors, employees, agents, or subcontractors receives or has access to confidential Social Security Administration (SSA), or Federal Tax Information (FTI), or Criminal Justice Information Services (CJIS) records, in the performance of Work under this Agreement, County shall comply, and ensure that all of County’s officers, directors, employees, agents, and subcontractors comply, with the following provisions:

- (a) With respect to SSA records:
 - i. Provide a current list of employees and employees of any agent or subcontractor with access to SSA records;
 - ii. Adhere to the same security requirements as employees of ODHS;
 - iii. Abide by all relevant Federal laws, restrictions on access, use, disclosure, and the security requirements contained within ODHS' agreement with SSA;
 - iv. Provide its employees and agents the same security awareness training as ODHS employees; and
 - v. Include the provisions of this Section 9.a.(3)(a) in any subcontract.

- (b) With respect to Federal Tax Information (FTI), as defined in IRS Publication 1075:
 - i. County and its officers, directors, and employees with access to, or who use FTI provided by ODHS must meet the background check requirements defined in IRS Publication 1075;
 - ii. Any FTI made available to County shall be used only for the purpose of carrying out the provisions of this Agreement. County shall treat all information contained in FTI as confidential and that information shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this Agreement. Inspection by or disclosure to anyone other than an officer or employee of the County is prohibited;
 - iii. County shall account for all FTI upon receipt and shall properly store all FTI before, during, and after processing. In addition, all FTI related output and products will be given the same level of protection as required for the source material;
 - iv. No work involving FTI furnished under this Agreement will be subcontracted without prior written approval of the IRS;
 - v. Maintain a list of employees who are authorized access to FTI. Such list will be provided to ODHS and, upon request, to the IRS reviewing office; and
 - vi. Include the provisions of this Section 9.a.(3)(b) in any subcontract.

- (c) With respect to Criminal Justice Information Services (CJIS) information, County shall:
 - i. Meet the same training and certification criteria required by governmental agencies performing a similar function, and shall be subject to the same extent of audit review as are local user agencies;
 - ii. Acknowledge, via signing of the attached CJIS Outsourcing Agreement, and abide by all aspects of the CJIS Outsourcing Standard approved by the Director of the FBI, acting for the U.S. Attorney General, as referenced in Title 28 CFR 20.33 (a)(7). Modifications to the CJIS Outsourcing Standard shall be enacted only by the FBI; and
 - iii. Include the provisions of this Section 9.a.(3)(c) in any subcontract.
- (d) Failure to abide by any of the requirements in this subsection could result in criminal or civil penalties and result in termination of this Agreement.
- (e) County may be subjected to periodic and ongoing security reviews to ensure compliance with the requirements of Section 9.a.(3).
- (4) Except as prohibited by Section 9.a.(3) above, ODHS, County and any subcontractor will share information as necessary to effectively serve ODHS Clients.

b. Non-Client Information.

- (1) Each Party acknowledges that it and any of its officers, directors, employees, and agents may, in the course of performing its responsibilities under this Agreement, be exposed to or acquire information that is confidential to the other Party. To the extent permitted by law, any and all information of any form provided to a Party or its officers, directors, employees and agents in the performance of the Agreement that reasonably could at the time of its disclosure be understood to be confidential shall be deemed to be confidential information of the originating Party (“Confidential Non-Client Information”).
- (2) Confidential Non-Client Information shall be deemed not to include information that:
 - (a) Is or becomes (other than by disclosure by the Party acquiring such information) publicly known or is contained in a publicly available document except to the extent applicable law still restricts disclosure;
 - (b) Is furnished by the originating Party to others without restrictions similar to those imposed on the receiving Party under this Agreement;

- (c) Is rightfully in the receiving Party's possession without the obligation of nondisclosure prior to the time of its disclosure by the originating Party under this Agreement;
 - (d) Is obtained from a source other than the originating Party without the obligation of confidentiality;
 - (e) Is disclosed with the written consent of the originating Party; or
 - (f) Is independently developed by the receiving Party's officers, directors, employees, and agents who can be shown to have had no access to the Confidential Non-Client Information.
- (3) Nondisclosure. The receiving Party shall hold all Confidential Non-Client Information in strict confidence, using at least the same degree of care that it uses in maintaining the confidentiality of its own confidential information; and shall not sell, assign, license, market, transfer or otherwise dispose of, give or disclose Confidential Non-Client Information to third parties; shall not use Confidential Non-Client Information for any purposes whatsoever other than as contemplated by this Agreement or reasonably related thereto; and shall advise any of its officers, directors, employees and agents that receive or have access to the Confidential Non-Client Information of their obligations to keep Confidential Non-Client Information confidential. These confidentiality obligations do not restrict disclosure of information otherwise qualifying as Confidential Non-Client Information if the receiving Party can show that either of the following conditions exists: (i) the information was disclosed in response to a subpoena or court order duly issued in a judicial or legislative process, in which case the receiving Party shall notify the originating Party of the subpoena five days prior to the disclosure, unless such notice could not reasonably be given; or (ii) the disclosure was required to respond to a request for the information made under the Oregon Public Records Law, ORS 192.311 to 192.478. The receiving Party shall notify the originating Party of a public records request five days prior to the disclosure.
- c. Upon request and pursuant to the instructions of ODHS, County shall return or destroy all copies of Confidential Information, and County shall certify in writing the return or destruction of all Confidential Information.
 - d. "Client" means any individual, family or provider:
 - (1) For whom ODHS must provide Services and incidental or specialized Goods, in any combination thereof ("Services and Incidental Supplies"), according to state, federal law, rule, and policy. Those Services and Incidental Supplies include but are not limited to treatment, care, protection, and support without regard to the proximity of the services being provided;
 - (2) Who in fact receives and utilizes services provided by ODHS primarily for that individual's or family's benefit;

- (3) Who is under the custody, care, or both of ODHS; or
- (4) Who provides direct care or Services and is a proxy or representative of the non-provider Client.

11. Nondiscrimination.

- a. The County must provide services to ODHS Clients without regard to race, religion, national origin, sex, age, marital status, sexual orientation, or disability (as defined under the Americans with Disabilities Act). Contracted services must reasonably accommodate the cultural, language, and other special needs of Clients.
- b. County certifies that County has a written policy and practice that meets the requirements described in ORS 279A.112 for preventing sexual harassment, sexual assault, and discrimination against employees who are members of a protected class. County agrees, as a material term of this Agreement, to maintain such policy and practice in force during the entire Agreement term.
- c. As required by ORS 279B.235, County must comply with ORS 652.220 and shall not unlawfully discriminate against any of County’s employees in the payment of wages or other compensation for work of comparable character on the basis of an employee’s membership in a protected class. “Protected class” means a group of persons distinguished by race, color, religion, sex, sexual orientation, national origin, marital status, veteran status, disability, or age. County’s compliance with this subsection constitutes a material element of this Agreement and a failure to comply constitutes a breach that entitles ODHS to terminate this Agreement for cause.
- d. County may not prohibit any of County’s employees from discussing the employee’s rate of wage, salary, benefits, or other compensation with another employee or another person. County may not retaliate against an employee who discusses the employee’s rate of wage, salary, benefits, or other compensation with another employee or another person.

12. HIPAA Compliance. As a Business Associate of a Covered Entity, ODHS must comply with the Health Insurance Portability and Accountability Act and the federal regulations implementing the Act (collectively referred to as HIPAA), and ODHS must also comply with OAR 943-014-0400 through OAR 943-014-0465. County is a Business Associate of ODHS and therefore must comply with OAR 943-014-0400 through OAR 943-014-0465 and the Business Associate requirements set forth in 45 CFR 164.502 and 164.504.

County shall be liable to ODHS for any and all costs incurred by ODHS, including, but not limited to, costs of issuing any notices required by HIPAA, HITECH or any other applicable law and damages to third parties as a result of County’s Breach of Unsecured Protected Health Information.

- a. **Consultation and Testing.** If County reasonably believes that the County’s or ODHS’ data transactions system or other application of HIPAA privacy or security compliance policy may result in a violation of HIPAA requirements, County shall promptly consult the ODHS Information Security Office. County or

ODHS may initiate a request for testing of HIPAA transaction requirements, subject to available resources and the ODHS testing schedule.

- b. Data Transactions Systems.** If County intends to exchange electronic data transactions with ODHS or the Oregon Health Authority (OHA) in connection with claims or encounter data, eligibility or enrollment information, authorizations or other electronic transaction, County shall execute an Electronic Data Interchange (EDI) Trading Partner Agreement and shall comply with EDI Rules set forth in OAR 943-120-0110 through 943-120-0160.

EXHIBIT E

Standard Terms and Conditions

- 1. Governing Law, Consent to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between the parties that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within a circuit court for the State of Oregon of proper jurisdiction. THE PARTIES, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENT TO THE IN PERSONAM JURISDICTION OF SAID COURTS. Except as provided in this Section, neither party waives any form of defense to 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. The parties acknowledge that this is a binding and enforceable agreement and, to the extent permitted by law, expressly waive any defense alleging that either party does not have the right to seek judicial enforcement of this Agreement.

This Section shall survive expiration or termination of this Agreement.

- 2. Compliance with Law.** Both parties shall comply with laws, regulations, executive orders to which they are subject, and which are applicable to the Agreement or to the Work. Without limiting the generality of the foregoing, both parties expressly agree to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement: (a) all applicable requirements of state civil rights and rehabilitation statutes, rules and regulations; (b) all state laws requiring reporting of Client abuse; (c) 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 Work. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated. All employers, including County and ODHS, 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(2). County shall require all of its subcontractors to comply with and shall ensure that each of its subcontractors complies with, these requirements. Nothing in this Agreement shall require County or ODHS to act in violation of state or federal law or the Constitution of the State of Oregon.

This Section shall survive expiration or termination of this Agreement.

- 3. Independent Parties.**

The parties agree and acknowledge that their relationship is that of independent contracting parties and that County is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265 or otherwise.

4. Representations and Warranties.

a. County represents and warrants as follows:

- (1) Organization and Authority. County is a political subdivision of the State of Oregon duly organized and validly existing under the laws of the State of Oregon. County has full power, authority, and legal right to make this Agreement and to incur and perform its obligations hereunder.
- (2) Due Authorization. The making and performance by County of this Agreement (a) have been duly authorized by all necessary action by County and (b) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of County's charter or other organizational document and (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which County is a party or by which County may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery, or performance by County of this Agreement.
- (3) Binding Obligation. This Agreement has been duly executed and delivered by County and constitutes a legal, valid, and binding obligation of County, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.
- (4) County has the skill and knowledge possessed by well-informed members of its industry, trade or profession and County will apply that skill and knowledge with care and diligence to perform the Work in a professional manner and in accordance with standards prevalent in County's industry, trade or profession.
- (5) County shall, at all times during the term of this Agreement, be qualified, professionally competent, and duly licensed to perform the Work.
- (6) County prepared its proposal related to this Agreement, if any, independently from all other proposers, and without collusion, fraud, or other dishonesty.
- (7) Services. To the extent DD Services are performed by County, the delivery of each DD Service will comply with the terms and conditions of this Agreement and meet the standards for such DD Service as set forth herein, including but not limited to, any terms, conditions, standards and requirements set forth in the Service Element Standards and Procedures.

b. ODHS represents and warrants as follows:

- (1) Organization and Authority. ODHS has full power, authority, and legal right to make this Agreement and to incur and perform its obligations hereunder.

- (2) Due Authorization. The making and performance by ODHS of this Agreement (a) has been duly authorized by all necessary action by ODHS; (b) does not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency; and (c) does not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which ODHS is a party or by which ODHS may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by ODHS of this Agreement, other than approval by the Department of Justice if required by law.
- (3) Binding Obligation. This Agreement has been duly executed and delivered by and constitutes a legal, valid, and binding obligation of ODHS, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.
- c. Warranties Cumulative. The warranties set forth in this Section are in addition to, and not in lieu of, any other warranties provided.
- d. This Section shall survive expiration or termination of this Agreement.

5. Funds Available and Authorized.

- a. The State of Oregon's payment obligations under this Agreement are conditioned upon ODHS receiving funding, appropriations, limitations, allotment, or other expenditure authority sufficient to allow ODHS, in the exercise of its reasonable administrative discretion, to meet its payment obligations under this Agreement. County is not entitled to receive payment under this Agreement from any part of Oregon state government other than ODHS. Nothing in this Agreement is to be construed as permitting any violation of Article XI, Section 7 of the Oregon Constitution or any other law regulating liabilities or monetary obligations of the State of Oregon. ODHS represents that as of the date it executes this Agreement, it has sufficient appropriations and limitation for the current biennium to make payments under this Agreement.
- b. **Payment Method.** Payments under this Agreement will be made by Electronic Funds Transfer (EFT) and shall be processed in accordance with the provisions of OAR 407-120-0100 through 407-120-0380 or OAR 410-120-1260 through OAR 410-120-1460, as applicable, and any other Oregon Administrative Rules that are program-specific to the billings and payments. Upon request, County shall provide its taxpayer identification number (TIN) and other necessary banking information to receive EFT payment. County must maintain at its own expense a single financial institution or authorized payment agent capable of receiving and processing EFT using the Automated Clearing House (ACH) transfer method. The most current designation and EFT information will be used for all disbursements under this Agreement. County shall provide this designation and information on a form provided by ODHS. In the event that EFT information

changes or the County elects to designate a different financial institution for the receipt of any payment made using EFT procedures, County will provide the changed information or designation to ODHS on an ODHS-approved form. ODHS is not required to make any payment under this Agreement until receipt of the correct EFT designation and payment information from County.

c. This Section shall survive expiration or termination of this Agreement.

6. Reserved.

7. Ownership of Intellectual Property.

a. Definitions. As used in this Section 7 and elsewhere in this Agreement, the following terms have the meanings set forth below:

(1) "County Intellectual Property" means any intellectual property owned by County and developed independently from the Work.

(2) "Third Party Intellectual Property" means any intellectual property owned by parties other than ODHS or County.

b. Except as otherwise expressly provided herein, or as otherwise required by state or federal law, ODHS will not own the right, title and interest in any intellectual property created or delivered by County or a subcontractor in connection with the Work. With respect to that portion of the intellectual property that County owns, County grants to ODHS a perpetual, worldwide, non-exclusive, royalty-free and irrevocable license, subject to any provisions in the Agreement 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 7.b.(1) on ODHS' behalf, and (3) sublicense to third parties the rights set forth in Section 7.b.(1).

c. If state or federal law requires that ODHS or County grant to the United States a license to any intellectual property, or if state or federal law requires that ODHS or the United States own the intellectual property, then County shall execute such further documents and instruments as ODHS may reasonably request in order to make any such grant or to assign ownership in the intellectual property to the United States or ODHS. To the extent that ODHS becomes the owner of any intellectual property created or delivered by County in connection with the Work, ODHS will grant a perpetual, worldwide, non-exclusive, royalty-free and irrevocable license, subject to any provisions in the Agreement that restrict or prohibit dissemination or disclosure of information, to County to use, copy, distribute, display, build upon and improve the intellectual property.

d. County shall include in its Subcontracts terms and conditions necessary to require that subcontractors execute such further documents and instruments as ODHS may reasonably request in order to make any grant of license or assignment of ownership that may be required by federal or state law.

e. This Section survives the expiration or termination of this Agreement.

8. County Default.

County shall be in default under this Agreement upon occurrence of any of the following events:

- a. County fails to perform, observe, or discharge any of its covenants, agreements or obligations set forth herein;
- b. Any representation, warranty or statement made by County herein or in any documents or reports relied upon by ODHS to measure the delivery of Work, the expenditure of payments or the performance by County is untrue in any material respect when made;
- c. County (1) applies for or consents to the appointment of, or taking of possession by, a receiver, custodian, trustee, or liquidator of itself or all or substantially all of its property, (2) admits in writing its inability, or is generally unable, to pay its debts as they become due, (3) makes a general assignment for the benefit of its creditors, (4) is adjudicated a bankrupt or insolvent, (5) commences a voluntary case under the federal Bankruptcy Code (as now or hereafter in effect), (6) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (7) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the federal Bankruptcy Code (as now or hereafter in effect), or (8) takes any action for the purpose of effecting any of the foregoing; or
- d. A proceeding or case is commenced, without the application or consent of County, in any court of competent jurisdiction, seeking (1) the liquidation, dissolution or winding-up, or the composition or readjustment of debts, of County, (2) the appointment of a trustee, receiver, custodian, liquidator, or the like of County or of all or any substantial part of its assets, or (3) similar relief in respect to County under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for a period of sixty consecutive calendar days, or an order for relief against County is entered in an involuntary case under the federal Bankruptcy Code (as now or hereafter in effect).

9. Reserved.

10. ODHS Default.

ODHS shall be in default under this Agreement upon the occurrence of any of the following events:

- a. ODHS fails to perform, observe, or discharge any of its covenants, agreements, or obligations set forth herein; or
- b. Any representation, warranty or statement made by DHS herein is untrue in any material respect when made.

11. Reserved.

12. Termination.

a. County Termination. County may terminate this Agreement:

- (1) For its convenience, upon a minimum of 90 calendar days advance written notice to ODHS for caseloads below 1,000 Individuals and 180 calendar days with caseloads 1,000 or more Individuals;
- (2) Upon a minimum of 90 calendar days advance written notice to ODHS for caseloads below 1,000 Individuals and 180 calendar days with caseloads 1,000 or more Individuals, if County does not obtain funding, appropriations and other expenditure authorizations from federal, state or other sources sufficient to permit County to satisfy its performance obligations under this Agreement, as determined by County in the reasonable exercise of its administrative discretion;
- (3) Upon a minimum of 90 calendar days advance written notice to ODHS for caseloads below 1,000 Individuals and 180 calendar days with caseloads 1,000 or more Individuals, if ODHS is in default under this Agreement and such default remains uncured at the end of said period or such longer period, if any, as County may specify in the notice; or
- (4) Immediately upon written notice to ODHS, if Oregon statutes or federal laws, regulations or guidelines are modified, changed or interpreted by the Oregon Legislative Assembly, the federal government or a court in such a way that County no longer has the authority to meet its obligations under this Agreement.

b. ODHS Termination. ODHS may terminate this Agreement:

- (1) For its convenience, upon a minimum of 90 calendar days advance written notice to County for caseloads below 1,000 Individuals and 180 calendar days with caseloads 1,000 or more Individuals;
- (2) Upon a minimum of 90 calendar days advance written notice to County for caseloads below 1,000 Individuals and 180 calendar days with caseloads of 1,000 or more Individuals, if ODHS does not obtain funding, appropriations and other expenditure authorizations from federal, state or other sources sufficient to meet the payment obligations of ODHS under this Agreement, as determined by ODHS in the reasonable exercise of its administrative discretion. Notwithstanding the preceding sentence, ODHS may terminate this Agreement, immediately upon written notice to County or at such other time as it may determine if action by the Oregon Legislative Assembly or Emergency Board reduces ODHS' legislative authorization for expenditure of funds to such a degree that ODHS will no longer have sufficient expenditure authority to meet its payment obligations under this Agreement, as determined by ODHS in the reasonable exercise of its administrative discretion, and the effective date for such reduction in expenditure authorization is less than 45 calendar days from the date the action is taken;

- (3) Immediately upon written notice to County if Oregon statutes or federal laws, regulations or guidelines are modified, changed or interpreted by the Oregon Legislative Assembly, the federal government or a court in such a way that ODHS no longer has the authority to meet its obligations under this Agreement or no longer has the authority to provide payment from the funding source it had planned to use;
 - (4) Upon a minimum of 90 calendar days advance written notice to County, if County is in default under this Agreement and such default remains uncured at the end of said period or such longer period, if any, as ODHS may specify in the notice;
 - (5) Immediately upon written notice to County, if any license or certificate required by law or regulation to be held by County to perform the Work is for any reason denied, revoked, suspended, not renewed or changed in such a way that County no longer meets requirements to perform the Work. This termination right may only be exercised with respect to the particular part of the Work impacted by loss of necessary licensure or certification; or
 - (6) Immediately upon written notice to County, if ODHS determines that County has endangered or are endangering the health or safety of a Client or others in performing work covered by this Agreement.
- c. Mutual Termination.** The Agreement may be terminated immediately upon mutual written consent of the parties or at such other time as the parties may agree in the written consent.

13. Effect of Termination.

- a.** Upon termination of the entire Agreement:
 - (1) ODHS shall have no further obligation to pay County under this Agreement.
 - (2) County shall have no further obligation to perform Work under this Agreement.
 - (3) County shall retain all data and records in accordance of OAR 411-320-0070.
- b. Obligations and Liabilities.** Notwithstanding subsection (a)(2) above, any termination of this Agreement shall not prejudice any obligations or liabilities of either party accrued prior to such termination.
- c. Transition Services.** County shall provide original files either paper or electronic to support a responsible and secure transition of Services to another CME or ODDS.
- d. Transition Plan.** Following a termination notice, County and ODDS will collaborate to develop a transition plan to ensure continuity of care for Individuals.

- (1) The parties will cooperate in good faith with each other in connection with their obligations under this section and will perform their obligations under the Transition Plan. If the Transition Period extends beyond the Agreement term, the provisions of this Agreement will remain in effect for the duration of the Transition Period.
- (2) County shall complete the transition of data from County to any Providers that ODDS designates while ensuring there is an uninterrupted continuity of care of Service to Individuals.

e. This Section survives the expiration or termination of this Agreement.

- 14. Limitation of Liabilities.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT. NEITHER PARTY SHALL BE LIABLE FOR ANY DAMAGES OF ANY SORT ARISING SOLELY FROM THE TERMINATION OF THIS AGREEMENT OR ANY PART HEREOF IN ACCORDANCE WITH ITS TERMS. THIS LIMITATION OF LIABILITY IS PROVIDED TO THE EXTENT ANY RESULTING CONTINGENT REPAYMENT LIABILITY IS PERMITTED BY ARTICLE XI, SECTIONS 7 AND 10 OF THE OREGON CONSTITUTION AND THE OREGON TORT CLAIMS ACT, ORS 30.260 AND 30.300.

This Section shall survive expiration or termination of this Agreement.

- 15. Insurance.** County shall maintain, and shall require Subcontractors to maintain, insurance as set forth in Exhibit G Part 2, attached hereto. This Section shall survive expiration or termination of this Agreement.

16. Records Maintenance, Access.

a. Client Records. If County delivers a DD Service directly, County shall create and maintain an Individual record (“Client Record”) for each Individual who receives that DD Service, unless the Service Element Standards and Procedures precludes delivery of the DD Service on an Individual Client basis and reporting of Service commencement and termination information is not required by the Service Element Standards and Procedures. The Client Record shall contain:

- (1) Individual’s identification;
- (2) Assessments with problems;
- (3) Treatment, training, and care plan, as applicable;
- (4) Medical information when appropriate; and
- (5) Progress notes including Service termination summary and current assessment or evaluation instrument as designated by ODHS in administrative rules.

b. Expenditure Records. County shall document the use and expenditure of all funds paid by ODHS under this Agreement. Unless applicable federal law requires County to utilize a different accounting system, County shall create and maintain all use and expenditure records in accordance with generally accepted accounting principles and in sufficient detail to permit ODHS to verify how the funds paid by ODHS under this Agreement were used or expended.

- c. County shall maintain any other records, books, documents, papers, plans, records of shipments and payments and writings of County, whether in paper, electronic or other form, that are pertinent to this Agreement, in such a manner as to clearly document County’s performance.
 - d. All financial records, other records, books, documents, papers, plans, records of shipments and payments and writings of County whether in paper, electronic or other form, that are pertinent to this Agreement, are collectively referred to as “Records.”
 - e. **Access to Records and Facilities.** ODHS, the Secretary of State’s Office of the State of Oregon, and the federal government and their duly authorized representatives, shall have access to all Records, paper or electronic, of County that are directly related to this Agreement, the funding provided hereunder, or any Service for the purpose of making examinations, audits, excerpts, copies and transcriptions. In addition, County shall permit authorized representatives of ODHS to perform site reviews, in person or electronically, of all Services delivered by County. Entities with electronic records must provide at minimum guest access to said records for examination by ODHS, Secretary of State’s Office of the State of Oregon, the federal government, and their duly authorized representatives.
 - f. **Retention of Records.** County shall retain and keep accessible all Records for the longest of:
 - (1) Six years following final payment and termination of this Agreement;
 - (2) The period as may be required by applicable law, including the records retention schedules set forth in OAR Chapter 166;
 - (3) Until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement; or
 - (4) In accordance with OAR 411-320-0070.
 - g. This Section shall survive expiration or termination of this Agreement.
17. **Information Privacy/Security/Access.** If the Services performed under this Agreement require or allow County or, when allowed, its Provider(s) or Subcontractors, to have access to or otherwise use any ODHS’ Information Asset(s) or Network and Information System(s) to which security and privacy requirements apply, and ODHS grants County or its Provider(s) or Subcontractor(s) access to such ODHS Information Asset(s) or Network and Information System(s), County shall comply and require its Provider(s) or Subcontractor(s) to which such access has been granted to comply with the terms and conditions applicable to such access or use, including OAR 407-014-0300 through OAR 407-014-0320, as such rules may be revised from time to time. For purposes of this Section, “Information Asset” and “Network and Information System” have the meaning set forth in OAR 407-014-0305, as such rule may be revised from time to time.
18. **Force Majeure.** Neither ODHS nor County shall be held responsible for delay or default caused by fire, civil unrest, labor unrest, natural causes, war, or other cause which is beyond the reasonable control of ODHS or County, respectively. Each party shall,

however, make all reasonable efforts to remove or eliminate such cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement. ODHS may terminate this Agreement upon written notice to County after reasonably determining that the delay or breach will likely prevent successful performance of this Agreement.

19. Assignment of Agreement, Successors in Interest.

- a.** County shall not assign or transfer its interest in this Agreement without prior written consent of ODHS. Any assignment or transfer in violation of this Agreement shall be null and void. Any such assignment or transfer, if approved, is subject to such conditions and provisions required by ODHS. No approval by ODHS of any assignment or transfer of interest shall be deemed to create any obligation of ODHS in addition to those set forth in this Agreement.
- b.** The provisions of this Agreement shall be binding upon and inure to the benefit of the parties, their respective successors, and permitted assigns.

20. Resolution of Disputes. The parties shall attempt in good faith to resolve any dispute arising out of this Agreement. This may be done at any management level, including at a level higher than persons directly responsible for administration of the Agreement. In addition, the parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.

This Section shall survive expiration or termination of this Agreement.

21. Subcontracts. County shall not enter into any Subcontracts for any of the Work required by this Agreement without ODHS' prior written consent. In addition to any other provisions ODHS may require, County shall include in any permitted Subcontract under this Agreement provisions to require that ODHS will receive the benefit of Subcontractor performance as if the Subcontractor were County with respect to this Agreement. ODHS' consent to any Subcontract shall not relieve County of any of its duties or obligations under this Agreement.

22. No Third Party Beneficiaries. ODHS 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 any greater than the rights and benefits enjoyed by the general public unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

This Section shall survive expiration or termination of this Agreement.

23. Severability. The parties agree that 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 shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

This Section shall survive expiration or termination of this Agreement.

24. Notice. Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, e-mail, or mailing the same, postage prepaid to County or ODHS at the address or number set forth in this Agreement, or to such other addresses or numbers as either party may indicate pursuant to this Section. Any communication or notice so addressed and mailed by regular mail shall be deemed received and effective five days after the date of mailing. Any communication or notice delivered by e-mail shall be deemed received and effective five days after the date of e-mailing. Any communication or notice delivered by facsimile shall be deemed received and effective on the day the transmitting machine generates a receipt of the successful transmission, if transmission was during normal business hours of the County, or on the next business day if transmission was outside normal business hours of the County. Notwithstanding the foregoing, to be effective against the other party, any notice transmitted by facsimile must be confirmed by telephone notice to the other party. Any communication or notice given by personal delivery shall be deemed effective when actually delivered to the addressee.

ODHS: Office of Contracts & Procurement
635 Capitol Street NE, Suite 350
Salem, OR 97301
Telephone: 503-945-5818
Facsimile: 503-378-4324

County: Clackamas County
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2051 Kaen Road
P O Box 2950
Oregon City, Oregon 97045
Telephone: (503) 644-8640
Email: kcota@co.clackamas.or.us terrish@co.clackamas.or.us
kathleenras@co.clackamas.or.us brendadur@co.clackamas.or.us

This Section shall survive expiration or termination of this Agreement.

25. Headings. The headings and captions to sections of this Agreement have been inserted for identification and reference purposes only and shall not be used to construe the meaning or to interpret this Agreement.

This Section shall survive expiration or termination of this Agreement.

26. Counterparts. This Agreement and any subsequent amendments may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Agreement and any amendments so executed shall constitute an original.

27. Amendments; Waiver; Consent. ODHS may amend this Agreement to the extent provided herein, the solicitation document, if any from which this Agreement arose, and to the extent permitted by applicable statutes and administrative rules. No amendment, waiver, or other consent under this Agreement shall bind either party unless it is in

writing and signed by both parties and when required, approved by the Department of Justice. Such amendment, waiver, or consent 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 that party of that or any other provision.

This Section shall survive the expiration or termination of this Agreement.

28. Reserved.

29. Contribution.

- a.** If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against a party (the "Notified Party") with respect to which the other party ("Other Party") may have liability, the Notified Party must promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party a copy of the claim, process, and all legal pleadings with respect to the Third-Party Claim. Either party is entitled to participate in the defense of a Third-Party Claim, and to defend a Third-Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this paragraph and meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third-Party Claim with counsel of its own choosing are conditions precedent to the Other Party's liability with respect to the Third-Party Claim.
- b.** With respect to a Third Party-Claim for which the State is jointly liable with County (or would be if joined in the Third-Party Claim), the State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by County in such proportion as is appropriate to reflect the relative fault of the State on the one hand and of County on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the State on the one hand and of County on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if the State had sole liability in the proceeding.
- c.** With respect to a Third Party Claim for which County is jointly liable with the State (or would be if joined in the Third Party Claim), County shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the State in such proportion as is appropriate to reflect the relative fault of County on the one hand and of the State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of County on the one hand and of the State on the other hand shall be determined by reference to,

among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The County's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if it had sole liability in the proceeding.

d. This Section shall survive the expiration or termination of this Agreement.

- 30. Indemnification by Subcontractors.** County shall take all reasonable steps to cause its Subcontractor(s) that are not units of local government as defined in ORS 190.003, if any, to 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 now or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of County's Subcontractor or any of the officers, agents, employees or subcontractors of the Subcontractor ("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 Subcontractor from and against any and all Claims.

This Section shall survive the expiration or termination of this Agreement.

31. Stop-Work Order.

ODHS may, at any time, by written notice to County, require County to stop all, or any part of the Work required by this Agreement for a period of up to 90 calendar days after the date of the notice, or for any further period to which the parties may agree through a duly executed amendment. Upon receipt of the notice, County shall immediately comply with the Stop-Work Order terms and take all necessary steps to minimize the incurrence of costs allocable to the Work affected by the stop work order notice. Within a period of 90 calendar days after issuance of the written notice, or within any extension of that period to which the parties have agreed, ODHS shall either:

- a. Cancel or modify the stop work order by a supplementary written notice; or
- b. Terminate the Work as permitted by either the Default or the Convenience provisions of Section 13 "Termination".

If the Stop Work Order is canceled, ODHS may, after receiving and evaluating a request by County, make an adjustment in the time required to complete this Agreement and the Agreement price by a duly executed amendment.

This Section shall survive expiration or termination of this Agreement.

32. Purchase and Disposition of Equipment.

- a. For purposes of this Section, "Equipment" means tangible, non-expendable personal property having a useful life of more than one year and a net acquisition cost of more than \$5,000 per unit. However, for purposes of information technology equipment, the monetary threshold does not apply (except as provided below for software and storage devices). Information technology equipment shall be tracked for the mandatory line categories listed below:

Network
Personal Computer
Printer/Plotter
Server
Storage devices that will contain Client information.
Storage devices that will not contain Client information when the acquisition cost is \$100 or more.
Software when the acquisition cost is \$100 or more.

- b.** For any Equipment authorized by ODHS for purchase with funds from this Agreement, ownership shall be in the name of County and County is required to accurately maintain the following Equipment inventory records:
- (1) description of the Equipment;
 - (2) serial number;
 - (3) where Equipment was purchased;
 - (4) acquisition cost and date; and
 - (5) location, use, and condition of the Equipment.
- c.** Upon termination of this Agreement, or any Service thereof, for any reason whatsoever, County shall, upon request by ODHS, immediately, or at such later date specified by ODHS, tender to ODHS any and all Equipment purchased with funds under this Agreement as ODHS may require to be returned to the State. At ODHS' direction, County may be required to deliver said Equipment to a subsequent contractor for that contractor's use in the delivery of Services formerly provided by County. Upon mutual agreement, in lieu of requiring County to tender the Equipment to ODHS or to a subsequent contractor, ODHS may require County to pay to ODHS the current value of the Equipment. Equipment value will be determined as of the date of Agreement or Service termination.
- d.** If funds from this Agreement are authorized by ODHS to be used as a portion of the purchase price of Equipment, requirements relating to title, maintenance, Equipment inventory reporting and residual value shall be negotiated, and the agreement reflected in a special condition authorizing the purchase.
- e.** Notwithstanding anything herein to the contrary, County shall comply with 45 CFR 75.352, which, generally, describes the required maintenance, documentation, and allowed disposition of equipment purchased with federal grant funds.

EXHIBIT F

Federal Terms and Conditions

General Applicability and Compliance. Unless exempt under 45 Part 87 for Faith-Based Organizations (Federal Register, July 16, 2004, Volume 69, #136), or other federal provisions, County shall comply and, as indicated, cause all subcontractors to comply with the following federal requirements to the extent that they are applicable to this Agreement, to County, or to the Work, or to any combination of the foregoing. For purposes of this Agreement, 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.** County shall comply and require all subcontractors to comply with all federal laws, regulations, and executive orders applicable to the Agreement or to the delivery of the Work. Without limiting the generality of the foregoing, County expressly agrees to comply and require all subcontractors to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement: (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 laws requiring reporting of ODHS Client abuse. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated. No Federal Funds may be used to provide Work in violation of 42 U.S.C. 14402.
- 2. Equal Employment Opportunity.** If this Agreement, including amendments, is for more than \$10,000, then County shall comply and require all subcontractors to comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).
- 3. Clean Air, Clean Water, EPA Regulations.** If this Agreement, including amendments, exceeds \$100,000 then County shall comply and require all subcontractors to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 7606), the Federal Water Pollution Control Act as amended (commonly known as the Clean Water Act) (33 U.S.C. 1251 to 1387), specifically including, but not limited to Section 508 (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (2 CFR Part 1532), which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to ODHS, United States Department of Health and Human Services and the appropriate Regional Office of the Environmental Protection Agency. County shall include and require all subcontractors to include in all

contracts with subcontractors receiving more than \$100,000, language requiring the subcontractor to comply with the federal laws identified in this Section.

4. **Energy Efficiency.** County shall comply and require all subcontractors to comply with applicable mandatory standards and policies relating to energy efficiency that are contained in the Oregon energy conservation plan issued in compliance with the Energy Policy and Conservation Act 42 U.S.C. 6201 et. seq. (Pub. L. 94-163).
5. **Truth in Lobbying.** By signing this Agreement, the County certifies, to the best of the County's knowledge and belief that:
 - a. No federal appropriated funds have been paid or will be paid, by or on behalf of County, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.
 - b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the County shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
 - c. The County 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 Agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into this Agreement imposed by 31 U.S.C. 1352. 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 County under this Agreement shall be used, other than for normal and recognized executive legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, electronic communication, radio, television, or video presentation designed to support or defeat the enactment of legislation before the United States Congress or any State or local legislature itself, or designed to support or defeat any proposed or pending regulation, administrative action, or order issued by the executive branch of any State or local government itself.

- f. No part of any Federal Funds paid to County under this Agreement 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 County under this Agreement may be used for any activity that promotes the legalization of any drug or other substance included in schedule I of the schedules of controlled substances established under section 202 of the Controlled Substances Act except for normal and recognized executive congressional communications. This limitation shall not apply when there is significant medical evidence of a therapeutic advantage to the use of such drug or other substance of that federally sponsored clinical trials are being conducted to determine therapeutic advantage.
- 6. Resource Conservation and Recovery.** County shall comply and require all subcontractors to comply with all mandatory standards and policies that relate to resource conservation and recovery pursuant to the Resource Conservation and Recovery Act (codified at 42 U.S.C. 6901 et. seq.). Section 6002 of that Act (codified at 42 U.S.C. 6962) requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency. Current guidelines are set forth in 40 CFR Part 247.
- 7. Audits.**
- a. County shall comply, and require all subcontractors to comply, with applicable audit requirements and responsibilities set forth in this Agreement and applicable state or federal law.
 - b. If County expends \$750,000 or more in Federal Funds (from all sources) in a federal fiscal year, County shall have a single organization-wide audit conducted in accordance with the provisions of 2 CFR Subtitle B with guidance at 2 CFR Part 200. Copies of all audits must be submitted to ODHS within 30 days of completion. If County expends less than \$750,000 in a federal fiscal year, County is exempt from Federal audit requirements for that year. Records must be available as provided in Exhibit E, Section 16 “Records Maintenance, Access”. Audits must be submitted to odds.contracts@dhsosha.state.or.us .
- 8. Debarment and Suspension.** County shall not permit any person or entity to be a subcontractor if the person or entity is listed on the non-procurement portion of the

General Service Administration's "List of Parties Excluded from Federal Procurement or Nonprocurement Programs" in accordance with Executive Orders No. 12549 and No. 12689, "Debarment and Suspension" (See 2 CFR Part 180). This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory authority other than Executive Order No. 12549. subcontractors with awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.

- 9. Drug-Free Workplace.** County shall comply and require all subcontractors to comply with the following provisions to maintain a drug-free workplace:
- a.** County 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 County's workplace or while providing services to ODHS Clients. County's notice shall specify the actions that will be taken by County against its employees for violation of such prohibitions;
 - b.** Establish a drug-free awareness program to inform its employees about: The dangers of drug abuse in the workplace, County'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;
 - c.** Provide each employee to be engaged in the performance of services under this Agreement a copy of the statement mentioned in paragraph a. above;
 - d.** Notify each employee in the statement required by paragraph a. above that, as a condition of employment to provide services under this Agreement, 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) days after such conviction;
 - e.** Notify ODHS within ten calendar days after receiving notice under subparagraph d. above from an employee or otherwise receiving actual notice of such conviction;
 - f.** 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;
 - g.** Make a good-faith effort to continue a drug-free workplace through implementation of subparagraphs a. through f. above;
 - h.** Require any subcontractor to comply with subparagraphs a. through g. above;
 - i.** Neither County, or any of County's employees, officers, agents, or subcontractors may provide any service required under this Agreement 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

13. Disclosures.

- a.** 42 CFR Part 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.** County shall furnish to the State Medicaid agency or to the Health and Human Services (HHS) Secretary, within 35 days of the date of the request, full and complete information about the ownership of any subcontractor with whom the County has had business transactions totaling more than \$25,000 during the previous 12 month period ending on the date of the request, and any significant business transactions between the County, and any wholly owned supplier or between the County and any subcontractor, during the five year period ending on the date of the request. See, 42 CFR 455.105.
- c.** 42 CFR Part 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.
- d.** As such, County must disclose any person with a 5% or greater direct or indirect ownership interest in the County 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 10 years.
- e.** County shall ensure its Subcontractors make the disclosures required by this Section 13 to ODHS. ODHS reserves the right to take such action required by law, or where ODHS has discretion, as it deems appropriate, based on the

information received (or the failure to receive information) from the Provider, fiscal agent, or managed care entity.

- 14. Federal Intellectual Property Rights Notice.** The federal funding agency, as the awarding agency of the funds used, at least in part, for the Work performed under this Agreement, may have certain rights as set forth in the federal requirements pertinent to these funds. For purposes of this subsection, the terms “grant” and “award” refer to funding issued by the federal funding agency to the State of Oregon. The County agrees that it has been provided the following notice:
- a.** The federal funding agency reserves a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use the Work, and to authorize others to do so, for Federal Government purposes with respect to:
 - (1) The copyright in any Work developed under a grant, subgrant or contract under a grant or subgrant; and
 - (2) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.
 - b.** The parties are subject to applicable federal regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements.”
 - c.** The parties are subject to applicable requirements and regulations of the federal funding agency regarding rights in data first produced under a grant, subgrant or contract under a grant or subgrant.
- 15. Federal Whistleblower Protection.** County shall comply, and ensure the compliance by subcontractors or subgrantees, with 41 U.S.C. 4712, Enhancement of contractor protection from reprisal for disclosure of certain information.

EXHIBIT G PART 1
Required Subcontractor Provisions

For purposes of this Exhibit G Part 1, Subcontractor means the individual or entity that is contracting directly with County to provide CDDP Services under this Agreement.

1. County intending to subcontract the entire CDDP Operation shall engage in discussions with ODDS about its role in continuing to operate a CDDP and whether ODDS should contract directly with the vendor for operation of the CDDP. If the County intends to retain the Agreement and chooses to subcontract, the County understands that all funds allocated by the State are intended solely for the operation of a CDDP and its delivery of services.
2. County subcontracting the entire CDDP operation shall include in the Subcontract all language from Exhibit A, Exhibit B Part 1, Exhibit B Part 2, Exhibit B Part 3, Exhibit C, Exhibit D, Exhibit E, Exhibit F, Exhibit G Part 2 and Attachment #2. Amended subcontracts must be forwarded to ODDS.Contracts@dhsosha.state.or.us. All funding provided to County must be paid to Subcontractor within ten business days of receipt of payment. County may not retain any funds related to the operation of the CDDP covered under this Agreement.
3. County subcontracting a portion of the CDDP, must include in the subcontracts all language from Exhibit A, Exhibit B Part 1, Exhibit B Part 2 if applicable Service Element Standards and Procedures are listed in the Subcontract, Exhibit C, Exhibit D, Exhibit E, Exhibit F, Exhibit G Part 2, and Attachment #2. All funding provided to County for the specific CDDP Service that is subcontracted must be paid to Subcontractor within ten business days of receipt of payment. County cannot retain any funds related to the specific CDDP Service that is subcontracted.
4. County entity serving as the CDDP will be responsible for oversight of the Subcontractor.
5. Subcontractor must agree that it is an independent contractor and not an agent of the State of Oregon, ODHS, or County.

EXHIBIT G PART 2

Subcontractor Insurance Requirements

County shall require its first tier Subcontractor(s) that are not units of local government as defined in ORS 190.003, if any, to: i) obtain insurance as specified under Section 1 and meeting all the requirements under Sections 2, 3, 4, 5, 6, 7, and 8 of this Exhibit G Part 2 before the Subcontractors perform under subcontracts between County and the Subcontractors, and ii) maintain the insurance in full force throughout the duration of the subcontracts. As used in this paragraph, a “first tier” Subcontractor is a contractor with whom County directly enters a Subcontract. It does not include a subcontractor with whom the Subcontractor enters a contract.

The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to ODHS. County shall not authorize Subcontractors to begin work under the subcontracts until the insurance is in full force. Thereafter, County shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. County shall incorporate appropriate provisions in the subcontracts permitting it to enforce Subcontractor compliance with the insurance requirements and shall 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 or terminating the subcontracts, as permitted by the subcontracts, or pursuing legal action to enforce the insurance requirements. In no event shall County permit a Subcontractor to work under a Subcontract when County is aware that the Subcontractor is not in compliance with the insurance requirements.

For purposes of this Exhibit G Part 2 and the following Sections, Contractor means the individual or entity that is subcontracting directly with County for Services under this Agreement.

1. Insurance Requirements.

Contractor shall obtain at Contractor’s expense the insurance specified in this Exhibit G Part 2 prior to performing under this contract and shall maintain it in full force and at its own expense throughout the duration of this contract, as required by any extended reporting period or tail coverage requirements, and all warranty periods that apply.

Contractor shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to ODHS and County. Coverage shall be primary and non-contributory with any other insurance and self-insurance, with the exception of Professional Liability and Workers’ Compensation. Contractor shall pay for all deductibles, self-insured retention, and self-insurance, if any.

2. Workers’ Compensation & Employers’ Liability.

All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017, and provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Contractor shall require and ensure that each of its subcontractors complies with these requirements. If Contractor is a subject employer, as defined in ORS 656.023, Contractor shall also obtain employers' liability insurance

coverage with limits not less than \$500,000 each accident. If Contractor is an employer subject to any other state's workers' compensation law, Contractor shall provide workers' compensation insurance coverage for its employees as required by applicable workers' compensation laws including employers' liability insurance coverage with limits not less than \$500,000 and shall require and ensure that each of its out-of-state subcontractors complies with these requirements.

3. Commercial General Liability Insurance.

Required **Not required**

Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverage that are satisfactory to the State of Oregon. This insurance shall include personal and advertising injury liability, products and completed operations, contractual liability coverage for the indemnity provided under this contract, and have no limitation of coverage to designated premises, project, or operation. Coverage shall be written on an occurrence basis in an amount of not less than \$2,000,000 per occurrence. Annual aggregate limit shall not be less than \$4,000,000.

4. Automobile Liability Insurance.

Required **Not required**

Automobile Liability Insurance covering Contractor's business use including coverage for all owned, non-owned, or hired vehicles with a combined single limit of not less than \$1,000,000 for bodily injury and property damage. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for Commercial General Liability and Automobile Liability). Use of personal automobile liability insurance coverage may be acceptable if evidence that the policy includes a business use endorsement is provided.

5. Professional Liability Insurance.

Required **Not required**

Professional Liability Insurance covering any damages caused by an error, omission or any negligent acts related to the services to be provided under this contract by the Contractor and Contractor's subcontractors, agents, officers, or employees in an amount not less than \$2,000,000 per claim. Annual aggregate limit shall not be less than \$4,000,000. If coverage is on a claims made basis, then either an extended reporting period of not less than 24 months shall be included in the Professional Liability Insurance coverage, or the Contractor shall provide Tail Coverage as stated below.

6. Network Security and Privacy Liability.

Required **Not required**

Contractor shall provide network security and privacy liability insurance for the duration of the contract and for the period of time in which Contractor (or its business associates or subcontractor(s)) maintains, possesses, stores or has access to ODHS or Client data, whichever is longer, with a combined single limit of no less than \$1,000,000 per claim or incident. This insurance shall include coverage for third party claims and for losses, thefts, unauthorized disclosures, access or use of ODHS or Client data (which may

include, but is not limited to, Personally Identifiable Information (PII), Payment Card Data, and Protected Health Information (PHI) in any format, including coverage for accidental loss, theft, unauthorized disclosure access or use of ODHS data.

7. Directors, Officers, and Organization Liability.

Required **Not required**

Directors, Officers, and Organization Insurance covering the Contractor's Organization, Directors, Officers, and Trustees actual or alleged errors, omissions, negligent, or wrongful acts, including improper governance, employment practices and financial oversight, including improper oversight and or use of grant funds and donor contributions which includes state or federal funds, with a combined single limit of no less than \$1,000,000 per claim.

8. Physical Abuse and Molestation Insurance Coverage.

Required **Not required**

Abuse and Molestation Insurance in a form and with coverage that are satisfactory to the State of Oregon covering damages arising out of actual or threatened physical abuse, mental injury, sexual molestation, negligent: hiring, employment, supervision, investigation, and reporting to proper authorities, and retention of any person for whom the Contractor is responsible including but not limited to Contractor and Contractor's employees and volunteers. Policy endorsement's definition of an insured shall include the Contractor, and the Contractor's employees and volunteers. Coverage shall be written on an occurrence basis in an amount of not less than \$1,000,000 per occurrence. Any annual aggregate limit shall not be less than \$3,000,000. Coverage can be provided by a separate policy or as an endorsement to the commercial general liability or professional liability policies. The limits shall be exclusive to this required coverage. Incidents related to or arising out of physical abuse, mental injury, or sexual molestation, whether committed by one or more individuals, and irrespective of the number of incidents or injuries or the time period or area over which the incidents or injuries occur, shall be treated as a separate occurrence for each victim. Coverage shall include the cost of defense and the cost of defense shall be provided outside the coverage limit.

9. Excess/Umbrella Insurance.

A combination of primary and excess and or umbrella insurance may be used to meet the required limits of insurance.

10. Additional Insured.

All liability insurance, except for Workers' Compensation, Professional Liability, and Network Security and Privacy Liability (if applicable), required under this contract must include an additional insured endorsement specifying the State of Oregon, its officers, employees and agents as Additional Insureds, including additional insured status with respect to liability arising out of ongoing operations and completed operations, but only with respect to Contractor's activities to be performed under this contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance. The Additional Insured endorsement with respect to liability arising out of Contractor's ongoing operations must be on ISO Form CG 20 10 07 04 or equivalent and the

Additional Insured endorsement with respect to completed operations must be on ISO form CG 20 37 07 04 or equivalent.

11. Waiver of Subrogation.

Contractor shall waive rights of subrogation which Contractor or any insurer of Contractor may acquire against ODHS or State of Oregon by virtue of the payment of any loss. Contractor will obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not ODHS has received a waiver of subrogation endorsement from the Contractor or the Contractor's insurer(s).

12. Tail Coverage.

If any of the required insurance is on a claims made basis and does not include an extended reporting period of at least 24 months, 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 this contract, for a minimum of 24 months following the later of (i) Contractor's completion and ODHS' acceptance of all Services required under this contract, or, (ii) ODHS' or County's termination of contract, or, iii) the expiration of all warranty periods provided under this contract.

13. Certificate(s) and Proof of Insurance.

Contractor shall provide to County Certificate(s) of Insurance for all required insurance before delivering any Goods and performing any Services required under this contract. The Certificate(s) shall list the State of Oregon, its officers, employees, and agents as a Certificate holder and as an endorsed Additional Insured. The Certificate(s) shall also include all required endorsements or copies of the applicable policy language effecting coverage required by this contract. If excess and or umbrella insurance is used to meet the minimum insurance requirement, the Certificate of Insurance must include a list of all policies that fall under the excess and or umbrella insurance. As proof of insurance ODHS and County have the right to request copies of insurance policies and endorsements relating to the insurance requirements in this contract.

14. Notice of Change or Cancellation.

The Contractor or its insurer must provide at least 30 days' written notice to ODHS and County before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

15. Insurance Requirement Review.

Contractor agrees to periodic review of insurance requirements by ODHS under this agreement and to provide updated requirements as mutually agreed upon by County and ODHS.

16. State Acceptance.

All insurance providers are subject to State acceptance. If requested by ODHS or County, Contractor shall provide complete copies of insurance policies, endorsements, self-insurance documents, and related insurance documents to ODHS' or County's representatives responsible for verification of the insurance coverages required under this Exhibit G Part 2.

EXHIBIT H PART 1
Privacy and Security Agreement

1. **PURPOSE.** County requires the Access described in Exhibit H Part 2 “Third Party Information System Access Request” (Form MSC 0785), which is hereby incorporated into this Exhibit H Part 1 by reference, to perform the Work. The terms and conditions of this Privacy and Security Agreement govern:
 - 1.1. County’s Use of Data;
 - 1.2. County’s Access to ODHS’ Information Assets and Systems;
 - 1.3. The periodic exchange of Data between ODHS’ and County’s systems via electronic means; and
 - 1.4. The interconnection between ODHS’ and County’s respective networks and information systems.
2. **TERM.** This Privacy and Security Agreement is effective for a period coterminous with the Agreement, subject to review at least annually by ODHS, unless terminated earlier by either party in accordance with the “Suspension or Termination” section of this Privacy and Security Agreement.
3. **DEFINITIONS.** The following definitions apply to this Privacy and Security Agreement:
 - 3.1. “Access” means the ability or the means necessary to read, communicate, or otherwise use ODHS or State Data, Network and Information Systems, and Information Assets
 - 3.2. “Breach” means the acquisition, access, exposure, use, or disclosure of Data or an Information Asset in a manner not in compliance with applicable law, rule, or policy, or Data loss, misuse, or compromise.
 - 3.3. “Client Records” includes any Client, applicant, or participant information regardless of the media or source, collected by County in the course of completing the Work, provided through the Network and Information Systems to County, or otherwise exchanged between the parties.
 - 3.4. “Data” means information created, transmitted, or stored through the Network and Information Systems, including metadata, personal information, and Client Records.
 - 3.5. “Incident” means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of any Network and Information System or Information Asset. An Incident is an observable, measurable occurrence that is a deviation from expected operations or activities. An Incident may be a Breach, failure to protect a User’s identification (ID), or theft of computer equipment that uses or stores any Information Asset.

- 3.6. “Individual Access Request (IAR)” refers to the ODHS form used to authorize a User, identify the User’s job assignment, and the required access to Network and Information System(s). It generates a unique alpha/numeric code used to access the ODHS Network and Information Systems.
 - 3.7. “Information Asset(s)” refers to all information provided through ODHS, regardless of the source, which requires measures for security and privacy. Includes Data.
 - 3.8. “Network and Information System(s)” means ODHS’ and the State of Oregon’s computer infrastructure which provides personal communications; Data such as Client Records; Access to other Information Assets, regional, wide area and local networks; and the internetworking of various types of networks.
 - 3.9. “User” means any individual authorized to access Network and Information Systems and who has an been assigned a unique log-on identifier.
4. **CHANGES TO PRIVACY AND SECURITY AGREEMENT.** Other than as allowed under this section, County shall be requested to submit input to a revised “Third Party Information System Access Request” (Form MSC 0785), to request changes to Exhibit H Part 2. ODHS will review County’s request and, if approved in writing by ODHS, the parties will amend the Agreement in accordance with Exhibit E, Section 27.
- 4.1. **Point of Contact Changes.** Each party will provide notification to the other of any change of its respective point(s) of contact noted in Exhibit H Part 2, including any technical lead, and name an interim or replacement person in any such notice. Exhibit H Part 1 will be deemed amended to include the updated information.
 - 4.2. **Administrative Changes.** County may request updates to Exhibit H that are administrative in nature and do not modify the mode of Access or type of data by submitting a written request to ODHS. Upon written acceptance by ODHS, Exhibit H will be deemed amended to include the updated information.
5. **NOTIFICATIONS.**
- 5.1. **Points of Contact.** The parties have designated their respective technical leads in Exhibit H Part 2. The parties will facilitate direct contacts between technical leads. The parties will provide notification to the other of any changes in technical point of contact information.
 - 5.2. **Breach Notification.** In the event County or its Subcontractors or agents discover or are notified of an Incident or a Breach, including a failure to comply with County’s confidentiality obligations under the Agreement, County shall immediately notify ODHS’ Program Sponsor identified in Section 4 of Exhibit H Part 2 (or delegate) of the Incident or Breach. If ODHS determines that an Incident or Breach requires notification of ODHS Clients, or other notification required by law, ODHS will have sole control over the notification content, timing, and method, subject to County’s obligations under applicable law.

- 5.3. **Requests for Data.** In the event County receives a third-party request for Data, including any electronic discovery, litigation hold, or discovery searches, County shall first give ODHS notice and provide such information as may be reasonably necessary to enable ODHS to protect its interests.
- 5.4. **Changes in Law.** Each party will provide notice to the other of any change in law, or any other legal development, which may significantly affect its ability to perform its obligations.
6. **GRANT OF LICENSE.** Subject to County’s compliance with the Agreement, County is hereby granted a non-exclusive, non-transferable, and revocable authorization to Access and use Information Assets only in accordance with this Privacy and Security Agreement and applicable laws, rules, and policies. County and its employees, contractors, and agents shall not manipulate any URL or modify, publish, transmit, reverse engineer, participate in any unauthorized transfer or sale of, create derivative works of, or in any way exploit the content or software comprising this Access, or Information Assets made available through this Access.
7. **DATA PRIVACY.** In addition to County’s obligations under Exhibit D “General Terms and Conditions”, Section 9 regarding Confidentiality of Information:
- 7.1. **Generally.** County shall hold all Client Records, and other information as to personal facts and circumstances obtained by County on ODHS Clients, as confidential, using the highest standard of care applicable to the Client Records, and shall not divulge any Client Records without the written consent of the Client, the Client’s attorney, the responsible parent of a minor child, or the minor child’s guardian except as required by other terms of this Privacy and Security Agreement or applicable law.
- 7.2. **Limited Purposes.** County shall limit the use or disclosure of Data concerning Clients to persons directly connected with the administration of this Privacy and Security Agreement or the Agreement. Confidentiality policies apply to all requests from outside sources.
- 7.3. **Privacy Protections.** Data may include information, such as Client Records, subject to specified confidentiality protections under state or federal law. County shall comply with laws, regulations, and policies applicable to the information described in Exhibit H Part 2, including as specified in the Agreement.
- 7.4. **Training.** County’s employees, subcontractors, and agents who will Access Data have received training on the privacy and security obligations relating to the Data, including Client Records. County shall provide periodic privacy and security training to its employees, subcontractors, and agents.
8. **SECURITY REQUIREMENTS.**
- 8.1. **Compliance with Laws, Regulations, and Policies.** County and its employees, contractors, and agents shall comply with all applicable state and federal laws and regulations, and State of Oregon policies governing use and disclosure of Data (including Client Records) and Access to Information Assets, including as those laws, regulations, and policies may be updated from time to time. Applicable laws, regulations, and policies include but are not limited to:

- 8.1.1. ODHS and OHA Information Security and Privacy Policies:
<https://www.oregon.gov/oha/FOD/OIS-ISPO/Pages/Policies.aspx>
- 8.1.2. ODHS and OHA Privacy and Confidentiality administrative rules, OAR Chapter 407, Division 14, and OAR Chapter 943, Division 14.
- 8.1.3. The Health Insurance Portability and Accountability Act (HIPAA), including as amended by the Health Information Technology for Economic and Clinical Health (“HITECH”) Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009, Public Law 111-5 (“ARRA”), and its implementing Privacy Rule and Security Rule, 45 CFR Parts 160 and 164. County shall comply with HIPAA Compliance included in the Agreement in Exhibit D “General Terms and Conditions”, Section 12 in connection with County’s Access.
- 8.1.4. The Oregon Consumer Identity Theft Protection Act, ORS 646A.600 through 646A.628, to the extent applicable.
- 8.1.5. Oregon’s Statewide Information Security Standards:
<https://www.oregon.gov/das/OSCIO/Documents/2019StatewideInformationAndCyberSecurityStandardsV1.0.pdf>
- 8.2. **Responsible for Compliance.** County is responsible for the compliance of its employees, agents, and subcontractors with this Privacy and Security Agreement and with any third-party licenses to which Access is subject.
- 8.3. **Privacy and Security Measures.** County represents and warrants it has established and will maintain privacy and security measures that meet or exceed the standards set in laws, rules, and regulations applicable to the safeguarding, security and privacy of Data, including Client Records, all Information Assets, regardless of the media, and all Network and Information Systems. County shall monitor, periodically assess, and update its security controls and risk to ensure continued effectiveness of those controls.
- 8.4. **Security Risk Management Plan.** County shall ensure the level of security and privacy protection required in accordance with this Privacy and Security Agreement is documented in a security risk management plan. County shall make its security risk management plan available to ODHS for review upon request.
- 8.5. **Audit Rights and Access.** County shall maintain records in such a manner as to clearly document its compliance with and performance under this Privacy and Security Agreement, and provide ODHS, the Oregon Secretary of State, the federal government, and their duly authorized representatives access to County’s officers, agents, contractors, subcontractors, employees, facilities and records for ODHS to:
 - 8.5.1. Determine County’s compliance with this Privacy and Security Agreement,
 - 8.5.2. Validate County’s written security risk management plan, or

- 8.5.3. Gather or verify any additional information ODHS may require to meet any state or federal laws, rules, or orders regarding Information Assets.
- 8.5.4. Access to facilities, systems, and records under this section will be granted following reasonable notice to County. Records include paper or electronic form, system security logs, and related system components and tools (including hardware and software), required to perform examinations and audits, and to make excerpts and transcripts, including for data forensics.

9. ACCESS TO ODHS SYSTEMS.

- 9.1. **ODHS Review of User Requests.** If required for Access, ODHS will review requests, including forms such as the IAR, and will:
 - 9.1.1. Notify County of the approval or denial of its request for each User for whom Access has been requested;
 - 9.1.2. Provide any unique log-on identifier required for authorized Access;
 - 9.1.3. Provide updates to approved inquiry processes and instructions to County.
- 9.2. **County's Responsibilities for User Accounts.** County shall facilitate completion of any forms (such as the IAR) for each person for whom Access is requested.
 - 9.2.1. County is responsible for all activities that occur through its Access, including for any acts related to a lost or stolen User ID or password.
 - 9.2.2. County is responsible for ensuring information provided by its Users is accurate, complete, and up to date.
 - 9.2.3. County shall immediately notify ODHS when a User, group of Users, or County, no longer requires Access whether due to changes in duties or due to changes in County's programs related to the Agreement.
- 9.3. **Security and Disposal.** County shall maintain security of equipment, and ensure the proper handling, storage and disposal of all Information Assets accessed, obtained, or reproduced by County and its Users to prevent inadvertent destruction or loss. County shall ensure proper disposal of equipment and Information Assets when authorized use ends, consistent with County's record retention obligations and obligations regarding Information Assets under the Agreement.
- 9.4. **Prevention of Unauthorized Access.** County shall prevent any Access to State of Oregon Network and Information Systems by its Users that is not authorized in accordance with the Agreement and applicable law and shall implement and maintain safeguards to prevent unauthorized access.
- 9.5. **Access from Outside the US and its Territories.** County Access to the state network from outside the US and its territories is prohibited unless approved by the ODHS|OHA Chief Information Risk Officer (CIRO). If approved, the County shall provide ODHS|OHA with the IP addresses, or IP address range, to be used to Access the network. Any changes to the provided IP addresses, or IP range, shall be immediately communicated to ODHS|OHA or Access could be affected.

- 9.5.1. County shall not allow use of any Information Asset in any country or territory in any manner prohibited by governing applicable law, rule, or policy.
- 9.6. **Authorized Access and Use Only.** No User may Access or use Data for any purpose other than those specifically authorized through the Agreement.
 - 9.6.1. Users shall not use Access to obtain or attempt to obtain any Data or Information Assets not authorized or intentionally made available.
 - 9.6.2. The use and disclosure of any Information Asset is strictly limited to the minimum information necessary to the exchange of Data between the parties described in Exhibit H Part 2.
 - 9.6.3. Except as otherwise specified or approved by ODHS, neither County nor its Users may modify, alter, delete, or destroy any Information Asset.
- 9.7. **Revocation or Termination of Access.** Breach, or wrongful use or disclosure of Information Assets by County or its Users, may cause the immediate revocation of the Access granted through this Privacy and Security Agreement, in the sole discretion of ODHS, or ODHS may specify a reasonable opportunity for County to cure the unauthorized use or disclosure and end the violation, and terminate the Access if County does not do so within the time specified by ODHS. Legal actions also may be taken for violations of applicable regulations and laws.
- 9.8. **No Unauthorized Distribution.** County shall not sell, make available, or provide Information Assets in any form to any other persons or organizations, and shall not use the Information Assets for any purposes other than as allowed under the Agreement and applicable law.
- 9.9. **No Impairment.** County shall not use this Access in any manner which could damage, disable, overburden, or impair Network and Information Systems or interfere with any other entity's use or benefit of Network and Information Systems.
- 9.10. **Prohibition on Data Mining.** County shall not capture, maintain, scan, index, share or use Data stored or transmitted by virtue of this interconnection, or otherwise use any data-mining technology, for any non-authorized activity. For purposes of this requirement, "non-authorized activity" means the data mining or processing of data, stored or transmitted through the Network and Information Systems, for unrelated commercial purposes, advertising or advertising-related purposes, or for any other purpose other than security analysis that is not explicitly authorized in this Privacy and Security Agreement.
- 9.11. **Incidents and Breaches.** County shall comply, and shall cause its subcontractors to comply, with any requirements for identifying and addressing an Incident or Breach. This requirement applies regardless of whether the Incident or Breach was accidental or otherwise.

10. **SUSPENSION OR TERMINATION.**

- 10.1. This Privacy and Security Agreement may be terminated at any time by written agreement of the parties.

- 10.2. This Privacy and Security Agreement may be terminated by either party upon thirty (30) calendar days' written notice to the other party.
 - 10.3. Access and this Privacy and Security Agreement may be terminated immediately upon written notice from County if Access is no longer needed by County.
 - 10.4. ODHS may immediately revoke the Access granted County for County's failure to comply with the requirements of this Privacy and Security Agreement. In such event, ODHS will provide subsequent written notice to County's point of contact. ODHS may, to the extent it determines it is reasonable and able to do so, provide advance notice to County to cure any deficiency or breach of this Privacy and Security Agreement.
 - 10.5. Either party may terminate this Privacy and Security Agreement, and ODHS may modify Access, upon written notice if there are changes to or revised interpretations of federal or state laws, rules, or regulations, or if either party has changes in policies that require such action.
- 11. RETURN OF INFORMATION ASSETS.** Upon expiration or termination of the Agreement or this Privacy and Security Agreement for any reason whatsoever, County shall immediately deliver to ODHS all of ODHS' Information Assets, including Data and Client Records, that are in the possession or under the control of County in whatever stage and form of recordation such property is expressed or embodied at that time.
- 11.1. Except as necessary to meet obligations under Exhibit E "Standard Terms and Conditions", Section 16 "Records Maintenance, Access", County shall not retain any copies of Information Assets. County shall notify ODHS of any conditions that make returning all ODHS Information Assets not feasible. Upon ODHS' written acknowledgement that returning all Information Assets is not feasible, County shall purge or destroy retained Data in all its forms in accordance with the most current version of NIST SP 800-88 (or other agreed-upon standard) and on request provide ODHS with written certification of sanitization.
 - 11.2. County shall maintain protections required by law or the Agreement for any retained State of Oregon Information Asset for so long as County (including through any subcontractor) retains it.
- 12. INDEMNIFICATION AND INSURANCE.** Indemnification and insurance coverages provided by County under the Agreement apply to this Privacy and Security Agreement.
- 13. COSTS.** Each party will bear its own costs related to the acquisition of all equipment, software, data lines or connections necessary for Access, unless otherwise agreed to by written agreement between the parties. Each party is responsible for securing compatible hardware, equipment, and software, and network connections. Each party is responsible for complying with the licenses for third party products, including software and services that allow Access.
- 14. SURVIVAL.** Access and rights to use Information Assets ceases upon termination of this Privacy and Security Agreement. Rights and obligations which expressly or by their nature survive termination do so survive, and include this section, provisions regarding warranties and liabilities, indemnification, and confidentiality and non-disclosure.

15. **INTERPRETATION.** Any ambiguity in this Privacy and Security Agreement will be resolved to permit ODHS to comply with applicable privacy and security laws and State of Oregon and ODHS policies interpreting those laws.
16. **SUBCONTRACTORS.** County shall ensure all Subcontractors providing services related to this Privacy and Security Agreement are held to the same requirements as County.

EXHIBIT H PART 2



SHARED SERVICES
Information Security and Privacy Office



Third Party Information System Access Request

Reset form

An DHS or OHA program completes this form to request access for a [third-party entity](#)* (*organization or individual*) to data within an DHS or OHA information system or network.

*Please note that each entity only needs one form.

Hover over [blue](#) text for more information.

Request type (<i>required</i>): New request (ISPO will add agreement number)	Agreement number: TBD
---	--------------------------

Section 1. Third party information

This section defines the third party needing access to DHS/OHA network and information system(s). A third party is any individual or entity that is not part of the DHS/OHA workforce. Workforce means employees, volunteers, trainees and other individuals whose DHS or OHA work is under that agency's direct control. This applies to paid and unpaid workforce members.

Third-party agreement administrator contact information

This individual signs the contracts for the third party. (This is NOT a DHS/OHA employee.)

Organization/entity name: Clackamas County	
Contact name (<i>first, last</i>):	Kim Cota
Position/title:	Unsure
Work street address:	2051 Kaen Rd / PO Box 2950
City, State, ZIP:	Oregon City / OR / 97045
Phone:	503-644-8640
Email:	kcota@co.clackamas.or.us / terrisch@co.clackamas.or.us / KathleenRas@co
Website address (<i>optional</i>):	

Additional contact for third party

This individual will be the contact for setting up or terminating users for the third party. (This is not a DHS/OHA employee.)

Same contact information as above.

Section 2. Governing contract details

A DHS/OHA employee fills out this section. If a [governing contract](#) applies, please complete all applicable fields, below.

Does a governing contract establish a need for access? Yes No

Governing contract type	Contract number	Expiration date:
Contract:	169179-0	06/30/2023
Data use agreement:		

Agreement #: TBD Org name: Clackamas County

Page 1 of 4 MSC 0785 (7/2018)

EXHIBIT H PART 2

Memorandum of understanding:		
Other contract (if applicable):		

Background checks

Please ensure all applicable required background checks are completed. DHS and OHA systems containing or accessing regulated data may require additional background check requirements beyond the pre-employment background checks. Regulated data sets requiring additional background checks include but are not limited to:

- Criminal Justice Information (CJI) in the Criminal Justice Information Services (CJIS) policy, 5.12.1 Personnel Security Policy and Procedures
- Federal tax information (FTI) as documented in Internal Revenue Service (IRS) Publication 1075, 5.1.1 Background Investigation Minimum Requirements.

Direct questions related to the background check process to BCU.Info@state.or.us or 503-378-5470 or 1-888-272-5545.

Section 3. Access description

Reason for access

Describe in detail the [business need](#) for access:

3rd party needs to access CAM to provide information regarding serious incidents as a part of case management of I/DD clients as well as adult protective services that are required by each CDDP.

Requested access start date: 07/01/2021

Method of access

Check all methods the third party will use to access DHS/OHA information systems.

- DHS/OHA on-site Will only use DHS/OHA supplied PC, laptop or workstation: Yes No
- Remote access via [VPN](#) Will only use DHS/OHA supplied PC, laptop or workstation: Yes No
- Remote access via [Citrix](#)
- Access to folder on [Secure File Transfer Protocol \(SFTP\) server](#)
- Other (explain below): Will only use DHS/OHA supplied PC, laptop or workstation: Yes No

continued 3rd party access to CAM and other ODDS systems needed to fulfill contract requirements.

Access and information flow will occur from:

DHS/OHA to third party (i.e., third party has access to DHS/OHA's information assets and systems)

Scope of access

List all system names the third party needs to access. (This form authorizes access for the third-party organization as a whole. A partner number [P#] and a network login are needed to access the following information systems. The system-specific [individual user access request forms](#) must be used to request access for individual third-party employees using the system.)

- Email:** DHS/OHA email account authorized. This authorizes the third party to get DHS/OHA email accounts after receiving a completed individual user access request form for each individual.
- Network:** Network login authorized. This authorizes the third party to get DHS/OHA network login IDs after receiving a completed individual user access request form for each individual.

EXHIBIT H PART 2

City, State, ZIP:	Salem, OR 97301
Phone (<i>include ext.</i>):	503-945-6675
Email:	leaann.stutheit@dhsoha.state.or.us

Section 5. Program requestor

The [program requestor](#) is the DHS or OHA staff person who works with the third party on a day-to-day basis. That person requests the access agreement for the third party. The requestor can be the same person as the program sponsor or contract administrator. However, a program can list separate requestors/contract administrators. This will ensure all relevant parties receive contract communication and expiration notices.

Check this box and skip this section if the program requestor is also the program sponsor.

Submission

Click the submit button below to submit electronically, or email this completed form to the Information Exchange (InfoEx) Program within the Information Security and Privacy Office at DHSOHA.InfoEx@dhsoha.state.or.us. You can also email this address if you need more help.

Policy reference: <https://apps.state.or.us/Forms/Served/de090-003.pdf>

Submit by email

DHS/OHA Information Security and Privacy Office use only

Date received:	Date completed:
Date approved by all information owners:	Date executed:
Notes:	
Completed by:	

ATTACHMENT #1
Days and Hours of Operation

During the Agreement period stated on page 2, the CDDP will maintain the following days and hours of operation:

Days of Operation: _____ through _____

Hours of Operation: _____ until _____

Hours of Operation begin when the majority of CDDP staff are expected to be in the office or at their remote workstations and end when the majority of CDDP staff are expected to leave the office or their remote workstations.

Submitted by: _____

Date completed: _____

September 16, 2021

Board of County of Commissioners
Clackamas County

Members of the Board:

Approval of Amendment #1 to the Subrecipient Agreement with
Clackamas Women's Services (CWS)

Purpose/ Outcome	The special Emergency Solutions Grant COVID (ESG CV2) program, as authorized by the Coronavirus Aid, Relief, and Economic Securities Act (CARE Act). Special funding is to be used as a direct response to the COVID pandemic and its impacts on individuals and families.
Dollar Amount and Fiscal Impact	Emergency Solutions Grant (ESG CV2) funds budget increase of \$150,000 for a new total of \$452,500 as a grant.
Funding Source	U.S. Department of Housing and Urban Development ESG CARES Act funds No County General Funds are included in this Agreement
Duration	July 1, 2021 to December 31, 2021
Previous Board Action/ Review	Previous Board Action on February 9, 2021 A3.
Strategic Plan Alignment	Increase self-sufficiency for our clients. Ensure safe, healthy and secure communities.
County Review	The Subrecipient Agreement was reviewed and approved by County Counsel AN on July 29, 2021.
Procurement Review	1. Was the item processed through Procurement? yes <input type="checkbox"/> no <input checked="" type="checkbox"/> 2. Item is a Subrecipient Agreement that was processed through Finance Grant Management
Contact Person	Mark Sirois, Manager - Community Development: 503-655-8359
Contract No.	Subrecipient Agreement 21-019.A1 (H3S #10032_01)

BACKGROUND: The Community Development Division of the Health, Housing and Human Services Department requests the approval of Amendment #1 to the Subrecipient Agreement with Clackamas Women's Services (CWS) for homeless shelter services and rent assistance to prevent, prepare for, and respond to the coronavirus pandemic (COVID 19) in Clackamas County. In October of 2020 CWS applied for special Emergency Solutions Grant (ESG CV2) funding to provide eligible operating and shelter services and Rapid Rehousing assistance as needed.

PROJECT OVERVIEW: CWS will provide staffing, operation, food, rent assistance and transportation services as requested for the purpose of providing homeless shelter services to individuals and families to prevent exposure and to mitigate the impacts of COVID-19.

It is expected that the funding under this ESG CV2 agreement will assist approximately 60 homeless families with shelter services and Rapid Rehousing during the program year. With this amendment, CWS has added approximately 10 more clients to their existing caseload to ensure active participants in the Rapid Rehousing program can successfully transition from hotel room shelter beds to apartments.

RECOMMENDATION: We recommend the approval of this amendment to the Subrecipient Agreement.

Respectfully submitted,

A handwritten signature in black ink that reads "Mary A. Benbow". The signature is written in a cursive style.

For Rodney A. Cook
Rodney Cook, Interim Director
Health, Housing, and Human Services

TO READ:

4. Grant Funds. COUNTY's funding for this Agreement is the Emergency Solutions Grant (Catalogue of Federal Domestic Assistance [CFDA] #: 14.231) issued to COUNTY by the U.S. Department of Housing and Urban Development, Office of Community Planning and Development (Federal Award Identification # E20-UW-41-0001). The maximum, not to exceed, grant amount COUNTY will pay is \$452,500. This is a cost reimbursement grant and disbursements will be made in accordance with the schedule and requirements contained in Exhibit D: Required Financial Reporting and Reimbursement Request. Failure to comply with the terms of this Agreement may result in withholding of payment.

REPLACE:

EXHIBIT B
 SUBRECIPIENT PROGRAM BUDGET

- A. The total compensation under this contract shall not exceed \$ 302,500 with payments to be made as outlined in the body of the contract.
- B. Adjustments to the budget may only be made with the approval of both Parties.

Shelters

Program Costs	Total Budget Amount	Total ESG Amount	Source of Funds
Shelter Staffing Costs	\$430,000	\$0	Family Violence Prevention Services Act, Department of Housing and Urban Development (ESG), Oregon Housing Authority-Clackamas County- EHA and SHAP, Department of Human Services MLT, Department of Justice Crime Victim Services Division, H3S_Shelter and Crisis Services
Shelter utilities, repair, maintenance, communications	\$80,000	\$0	H3S_Shelter and Crisis Services, Department of Justice Crime Victim Services Division, Private Donations
Program Costs (i.e. food, support group supplies, interpretation services, etc.)	\$30,000	\$0	H3S_Shelter and Crisis Services, Department of Justice Crime Victim Services Division, Private Donations
Shelter supplies	\$20,000	\$0	H3S_Shelter and Crisis Services, Department of Justice Crime Victim Services Division, Private Donations

Provision of emergency shelter- hotel	\$500,000	\$100,000	ESG, Department of Justice CRF, Private Donations, EHA and SHAP, Clackamas County Affordable Housing Services Fund
Transportation	\$3,000	\$0	H3S_Shelter and Crisis Services, Department of Justice Crime Victim Services Division, Private Donations
Administration (10% allowable)	\$106,300	\$10,000	
Total Expenses	\$1,169,300		
Shelters Total ESG CV2:		\$110,000	

Rapid Rehousing

Program Costs	Total Budget Amount	Total ESG Amount	Source of Funds
RRH Staffing Costs	\$286,00	\$20,000	Family Violence Prevention Services Act, Department of Housing and Urban Development (ESG), Oregon Housing Authority-Clackamas County- EHA and SHAP, Department of Human Services MLT, Department of Justice Crime Victim Services Division, H3S_Shelter and Crisis Services
Program supplies, phones	\$10,000		
Transportation	\$3,000	\$0	Department of Justice Crime Victim Services Division, Private Donations
Rent Assistance	\$800,000	\$155,000	Department of Justice Office on Violence Against Women, Department of Housing and Urban Development, Department of Justice Crime Victim Services Division, Oregon Housing Authority EHA
Administration (10% allowable)	\$109,900	\$17,500	
Total Expenses	\$1,208,900		
Total ESG CV2:		\$192,500	

WITH:

**EXHIBIT B
 SUBRECIPIENT PROGRAM BUDGET**

- A. The total compensation under this contract shall not exceed \$ 452,500 with payments to be made as outlined in the body of the contract.
- B. Adjustments to the budget may only be made with the approval of both Parties.

Shelters

Program Costs	Total Budget Amount	Total ESG Amount	Source of Funds
Shelter Staffing Costs	\$430,000	\$0	Family Violence Prevention Services Act, Department of Housing and Urban Development (ESG), Oregon Housing Authority-Clackamas County- EHA and SHAP, Department of Human Services MLT, Department of Justice Crime Victim Services Division, H3S_Shelter and Crisis Services
Shelter utilities, repair, maintenance, communications	\$80,000	\$0	H3S_Shelter and Crisis Services, Department of Justice Crime Victim Services Division, Private Donations
Program Costs (i.e. food, support group supplies, interpretation services, etc.)	\$30,000	\$0	H3S_Shelter and Crisis Services, Department of Justice Crime Victim Services Division, Private Donations
Shelter supplies	\$20,000	\$0	H3S_Shelter and Crisis Services, Department of Justice Crime Victim Services Division, Private Donations
Provision of emergency shelter- hotel	\$500,000	\$100,000	ESG, Department of Justice CRF, Private Donations, EHA and SHAP, Clackamas County Affordable Housing Services Fund
Transportation	\$3,000	\$0	H3S_Shelter and Crisis Services, Department of Justice Crime Victim Services Division, Private Donations
Administration (10% allowable)	\$106,300	\$10,000	

Total Expenses	\$1,169,300		
Shelters Total ESG CV2:		\$110,000	

Rapid Rehousing

Program Costs	Total Budget Amount	Total ESG Amount	Source of Funds
RRH Staffing Costs	\$388,500	\$53,250	Family Violence Prevention Services Act, Department of Housing and Urban Development (ESG), Oregon Housing Authority-Clackamas County- EHA and SHAP, Department of Human Services MLT, Department of Justice Crime Victim Services Division, H3S_Shelter and Crisis Services
Program supplies, phones	\$10,000		
Transportation	\$3,000	\$0	Department of Justice Crime Victim Services Division, Private Donations
Rent Assistance	\$900,000	\$255,000	Department of Justice Office on Violence Against Women, Department of Housing and Urban Development, Department of Justice Crime Victim Services Division, Oregon Housing Authority EHA
Administration (10% allowable)	\$130,150	\$34,250	
Total Expenses	\$1,431,650		
Total ESG CV2:		\$342,500	

IN WITNESS WHEREOF, the parties hereto have caused this Amendment #1 to be executed by their duly authorized officers.

CLACKAMAS WOMEN'S SERVICES

DocuSigned by:

By: _____
DBCAD1860649464...
Melissa Erlbaum, Executive Director

8/12/2021

Date
250 Warner Milne Road

Street Address
Oregon City, Oregon 97045

City/State/Zip

melissae@cwsor.org

Email

CLACKAMAS COUNTY

Commissioner: Tootie Smith, Chair
Commissioner: Sonya Fischer
Commissioner: Paul Savas
Commissioner: Martha Schrader
Commissioner: Mark Shull

Tootie Smith, Chair

Date



September 9, 2021

Board of County Commissioners
 Clackamas County
 Members of the Board:

Approval of a Contract with Compelling Reason, LLC. for
Benefit Delivery Consulting Work

Purpose/Outcome	Establishment and implementation of benefit service delivery strategy to meet the demands of our workforce and Clackamas County.
Dollar Amount and Fiscal Impact	Contract Value \$487,045.00, budgeted in Self Insurance Fund 760
Funding Source	Department monthly Benefit Administration fees
Duration	Contract Execution through December 31, 2022
Previous Board Action/Review	Presented September 7, 2021 at Issues Session
Strategic Plan Alignment	<ol style="list-style-type: none"> 1. This project supports the Board's Strategic priority to Build public trust through good government and the Strategic Result, by 2024, County policies and decisions, service delivery, [...] will be equitable, inclusive and transparent. 2. This project directly supports Human Resource's Strategic Result #5 to align wellness programs with workforce needs.
Counsel Review	Counsel Date: July 26, 2021 Counsel Initials: AN
Procurement Review	Was this project processed through Procurement? Yes.
Contact Person	Kristi Durham, HR Manager, 503-742-5470
Contract No.	4456

Background:

In response to changing demands of the workplace, the Clackamas County Benefits Division contracted with an external consultant to establish the division's *benefit service delivery strategy*. The contractor will provide the following services as the County implements the benefit service delivery strategy: Project management, change management support, RFP support for third-party

administrator related to benefit transactions, process improvement and documentation, development of compliance audits and controls, data reporting and employee communications.

Implementation of the strategic plan requires a significant shift from transactional benefits administration to strategically managed benefits delivery, and will include outsourcing of benefit enrollments to a third-party administrator. The benefits service delivery strategy is built on the following pillars:

- Enhanced customer experience
- Minimize manual processing and reconciliation
- Access to accurate and timely data with dashboard reporting
- Implement plan sponsor best practices
- Instill consistent vendor management practices
- Introduce comprehensive compliance, audit and controls
- Transform benefits team service delivery model

Procurement Process:

This project was advertised in accordance with ORS and LCRB Rules on February 23, 2021. Proposals were publicly opened on March 24, 2021. The County received two (2) Proposals: Segal and Compelling Reason. After review of the Proposals, contracting with Compelling Reason was determined to be in the best interest of the county based upon the scoring criteria outlined in RFP 2020-94.

Recommendation:

Staff respectfully recommends that the Board approve and sign this contract with Compelling Reason, LLC. for Benefit Delivery Consulting Work and requests to be added to the September 9, 2021 Consent Agenda.

Sincerely,

kdurham@co.clackamas.or.us
clackamas.or.us
Kristi Durham,
HR Benefits Manager

Digitally signed by:
kdurham@co.clackamas.or.us
DN: CN = kdurham@co.
clackamas.or.us
Date: 2021.08.25 13:29:51 -
0700'

Placed on the BCC Agenda _____ by Procurement



**CLACKAMAS COUNTY
PERSONAL SERVICES CONTRACT
Contract #4456**

This Personal Services Contract (this “Contract”) is entered into between **Compelling Reason, LLC** (“Contractor”), and Clackamas County, a political subdivision of the State of Oregon (“County”) on behalf of its Department of Human Resources, Benefit Division.

ARTICLE I.

1. **Effective Date and Duration.** This Contract shall become effective upon signature of both parties. Unless earlier terminated or extended, this Contract shall expire on **December 31, 2022.**

2. **Scope of Work.** Contractor shall provide the following personal services: Contractor will perform benefits consulting work described in Contractor’s response to County’s request for Proposals #2020-94, the negotiated scope of which is set forth below.” (“Work”), in **Exhibit A.**

3. **Consideration.** The County agrees to pay Contractor, from available and authorized funds, a sum not to exceed **four hundred eighty seven thousand forty five dollars (\$487,045.00)**, for accomplishing the Work required by this Contract. Consideration rates are on a time and materials basis in accordance with the rates and costs specified in Exhibit A. If any interim payments to Contractor are made, such payments shall be made only in accordance with the schedule and requirements in Exhibit A.

4. **Invoices and Payments.** Unless otherwise specified, Contractor shall submit monthly invoices for Work performed. Invoices shall describe all Work performed with particularity, by whom it was performed, and shall itemize and explain all expenses for which reimbursement is claimed. The invoices shall include 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 the above Contract Number and be submitted to: KDurham@clackamas.us

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: <https://www.clackamas.us/finance/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.

7. Contractor and County Contacts.

Contractor Administrator: Kelly Jensen Phone: 503-568-1345 Email: kellyjensen@compellingreason.com	County Administrator: Kristi Durham Email: KDurham@clackamas.us
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Payment information will be reported to the Internal Revenue Service (“IRS”) under the name and taxpayer ID number submitted. (See I.R.S. 1099 for additional instructions regarding taxpayer ID numbers.) Information not matching IRS records will subject Contractor payments to backup withholding.

ARTICLE II.

- 1. ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence, in accordance with generally accepted accounting procedures and practices, sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. County and their duly authorized representatives shall have access to the books, documents, papers, and records of Contractor, which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Contractor shall maintain such books and records for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.
- 2. AVAILABILITY OF FUTURE FUNDS.** Any continuation or extension of this Contract after the end of the fiscal period in which it is written is contingent on a new appropriation for each succeeding fiscal period sufficient to continue to make payments under this Contract, as determined by the County in its sole administrative discretion.
- 3. CAPTIONS.** The captions or headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Contract.
- 4. COMPLIANCE WITH APPLICABLE LAW.** Contractor shall comply with all applicable federal, state and local laws, regulations, executive orders, and ordinances, as such may be amended from time to time.
- 5. COUNTERPARTS.** This Contract may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- 6. GOVERNING LAW.** This Contract, and all rights, obligations, and disputes arising out of it, shall be governed and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without regard to principles of conflicts of law. Any claim, action, or suit between County and Contractor that arises out of or relates to the performance of this Contract shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the County of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. Contractor, by execution of this Contract, hereby consents to the personal jurisdiction of the courts referenced in this section.
- 7. RESPONSIBILITY FOR DAMAGES; INDEMNITY.** Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, the conduct of Work, or from any act, omission, or neglect of Contractor, its subcontractors, agents, or employees. The Contractor agrees to indemnify, hold harmless and defend the County, and its officers, elected officials, agents and employees from and against all

claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees, subcontractors, or agents. However, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of County or any department of County, nor purport to act as legal representative of County or any of its departments, without first receiving from the Clackamas County Counsel's Office authority to act as legal counsel for County, nor shall Contractor settle any claim on behalf of County without the approval of the Clackamas County Counsel's Office. County may, at its election and expense, assume its own defense and settlement.

- 8. INDEPENDENT CONTRACTOR STATUS.** The service(s) to be rendered under this Contract are those of an independent contractor. Although the County reserves the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, County cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work. Contractor is not to be considered an agent or employee of County for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; and (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to County employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits.
- 9. INSURANCE.** Contractor shall secure at its own expense and keep in effect during the term of the performance under this Contract the insurance required and minimum coverage indicated below. The insurance requirement outlined below do not in any way limit the amount of scope of liability of Contractor under this Contract. Contractor shall provide proof of said insurance and name the County as an additional insured on all required liability policies. Proof of insurance and notice of any material change should be submitted to the following address: Clackamas County Procurement Division, 2051 Kaen Road, Oregon City, OR 97045 or procurement@clackamas.us.

Required - Workers Compensation: Contractor shall comply with the statutory workers' compensation requirements in ORS 656.017, unless exempt under ORS 656.027 or 656.126.
<input type="checkbox"/> Required – Commercial General Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage.
<input checked="" type="checkbox"/> Required – Professional Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per claim, with an annual aggregate limit of \$2,000,000 for damages caused by error, omission or negligent acts.
<input type="checkbox"/> Required – Automobile Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per accident for Bodily Injury and Property Damage.

The policy(s) shall be primary insurance as respects to the County. Any insurance or self-insurance maintained by the County shall be excess and shall not contribute to it. Any obligation that County agree to a waiver of subrogation is hereby stricken.

- 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

Contact 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.** All work product of Contractor that results from this Contract (the "Work Product") is the exclusive property of County. County and Contractor intend that such Work Product be deemed "work made for hire" of which County shall be deemed the author. If for any reason the Work Product is not deemed "work made for hire," Contractor hereby irrevocably assigns to County all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark or trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as County may reasonably request in order to fully vest such rights in County. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications. Notwithstanding the above, County shall have no rights in any pre-existing Contractor intellectual property provided to County by Contractor in the performance of this Contract except to copy, use and re-use any such Contractor intellectual property for County use only.
- 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, 10, 12, 13, 14, 15, 17, 20, 21, 25, 27, and 29 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. 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.

28. KEY PERSONS. Contractor acknowledges and agrees that a significant reason the County is entering into this Contract is because of the special qualifications of certain Key Persons set forth in the contract. Under this Contract, the County is engaging the expertise, experience, judgment, and personal attention of such Key Persons. Neither Contractor nor any of the Key Persons shall delegate performance of the management powers and responsibilities each such Key Person is required to provide under this Contract to any other employee or agent of the Contractor unless the County provides prior written consent to such delegation. Contractor shall not reassign or transfer a Key Person to other duties or positions such that the Key Person is no longer available to provide the County with such Key Person's services unless the County provides prior written consent to such reassignment or transfer.

29. MERGER. THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER REFERENCED THEREIN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY ALL PARTIES. ANY SUCH AMENDMENT, CONSENT, OR WAIVER SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. CONTRACTOR, BY THE SIGNATURE HERETO OF

ITS AUTHORIZED REPRESENTATIVE, IS AN INDEPENDENT CONTRACTOR,
ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS CONTRACT, AND
CONTRACTOR AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

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

Compelling Reason, LLC

Clackamas County



8/9/21

Authorized Signature

Date

Chair

Date

Kelly Jensen, Managing Co|



Name / Title (Printed)

Recording Secretary

761325-97

Oregon Business Registry #

Approved as to Form:

Andrew
Naylor

Digitally signed by
Andrew Naylor
Date: 2021.08.10
08:23:11 -07'00'

DLLC/OR

Entity Type / State of Formation

County Counsel

Date

EXHIBIT A
SCOPE OF WORK



STATEMENT OF WORK

July 16, 2021

OVERVIEW

Enclosed is the statement of work for Compelling Reason Consultants to achieve the project objectives on the project timeline.

Compelling Reason Team

Transform Benefit Service Delivery with Stage Gates

To ensure success at each major milestone, a stage gate review will be conducted with project sponsors. At each stage gate the consultant and County sponsors will:

- ✓ Confirm stage (people, process, and technology) objectives accomplished
- ✓ Set project work plan for next stage (as directed by the County)
- ✓ Refine and communicate County resource level of effort for next stage
- ✓ Review and approve necessary change orders
- ✓ Sign off by County project sponsors

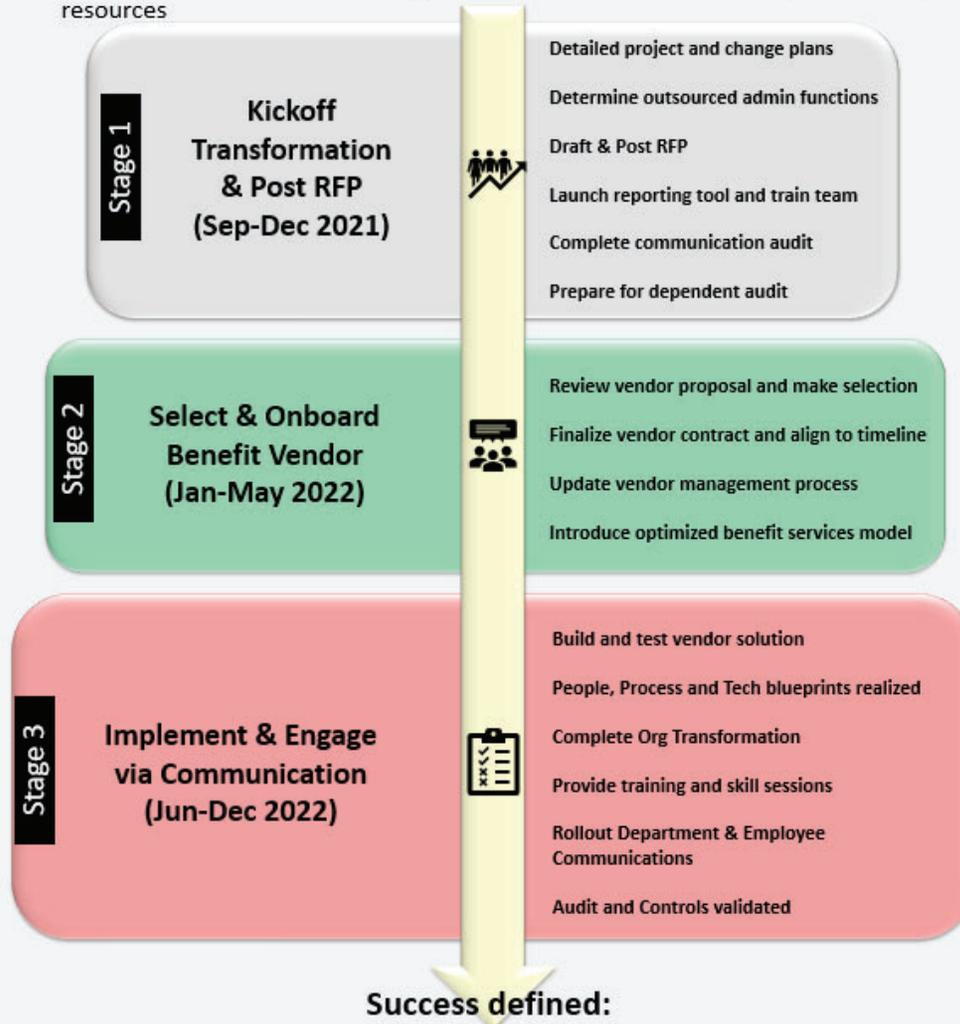
The following graphic provides a high-level project summary:

Transforming the employee benefits experience



During Kickoff:

Develop a detailed WBS including detailed tasks for both consulting and County resources

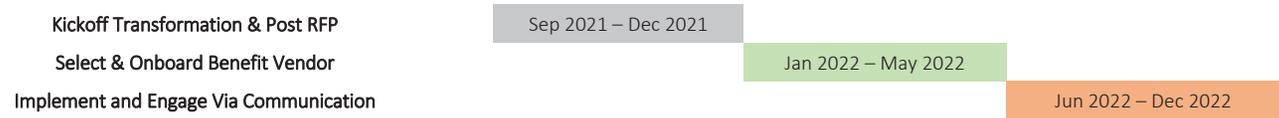


Success defined:

Move the County from transactional benefits administration to strategically managed benefits delivery

High-Level Timeline

The following summarizes the high-level timeline by stage. This indicates a start of September 2021, but this can be accelerated upon request by the County.



Project Consultant Hours Estimate

Green estimates are from the original RFP (realigned to the new timeline) and blue estimates show additional hours to support the extended timeline. **During kick-off the County will determine the level of internal and consultant hours needed for data and reporting-related deliverables.**

Service	Key Deliverable	Hours Estimate	Sep 21	Oct 21	Nov 21	Dec 21	Jan 22	Feb 22	Mar 22	Apr 22	May 22	Jun 22	Jul 22	Aug 22	Sep 22	Oct 22	Nov 22	Dec 22
Project Management	Project Management Planning	158	30	8	8	8	8	12	12	8	8	8	8	8	8	8	8	8
	Status Reporting & Talking Points	128	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8
	People, Process & Technology Blueprints	64											16	16	16	16		
	Project Governance	128	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8
	Vendor Management Oversight	80											16	16	16	16	16	
Change Management	Change Management Plan	148	12	16	16	16	8	8	8	8	8	8	8	8	8	8	8	
	Change Workshops	112				8	8	8	8	8	8	8	8	12	12	12	12	
	Stakeholder Engagement	160		8	8	8	8	8	8	8	8	8	8	20	20	20	20	
	Communication Plan	144		12	12	12	12	12	12	8	8	8	8	8	8	8	8	8
	Organizational Transformation	112										16	16	16	16	16	16	16
Vendor Selection	Confirm outsourced functions & draft RFP	120	40	40	40													
	Support Vendor Selection	65				20	20	25										
	Support onboarding of vendor	44								24	20							
	Refresh BRC	48										24	24					
	Other Benefit Strategy Support	48					4	4	4	4	4	4	4	4	4	4	4	4
Benefits Transformation	Key Deliverable: Refresh Communications																	
	Communications Audit & Updates	80	40	40														
	Develop Communication Campaign (Tell the Value Story of Benefits, Recruiting Tools and Benefits Program Engagement- New Tool)	64			16	16	16	16										
	Rollout Employee Engagement	36													12	12	12	
	Key Deliverable: Develop Consultative Benefit Services																	
	Develop consultative benefit service offering processes	48	16	16	16													
	Refresh org structure based on selected services	48				16	16	16										
Refresh skill of team based on the new model: training (up to 3 sessions) or postings	48							16	16	16								

	Restructure benefit services team	48										12	12	12	12			
	Key Deliverable: Update Vendor Management Process																	
	Develop vendor management processes	48	24	24														
	Engage vendors on new process and Service Level Agreements (SLAs)	48			12	12	12	12										
	Update approach to Annual Vendor Summit	32												16	16			
	Support monitoring vendors and report on SLAs	24															12	12
	Key Deliverable: Prepare for Dependent Audit																	
	Prepare for dependent audit	60			30	30												
	Build audit & controls into a process flow	48					24	24										
	Work with impacted County teams to update processes	48							24	24								
	Key Deliverable: Minimize Manual Processing																	
	Update processes to reflect changes to PS and benefit admin vendor	48									24	24						
	Work with impacted County teams to update processes	48											24	24				
	Support vendor testing	48													24	24		
Support go-live and monitor/address issues	48															24	24	
Data & Reporting	Stand up Power BI and operationalize reports (up to 3 dashboards and 6 reports)	240	60	60	40	20	20	20	10	10								
	"Basic Training" for Benefits, WDM, and TS how to use Power BI and other data solutions	120		20	20	20								20	20	20		
	Create Combined Data Model	80					20	20						20	20			
	Automate data exchange with benefit admin vendor and benefit carriers	64											16	16	16	16		
	Support Outsourcing including test and production file creation	96												24	24	24	24	

Key Deliverable Descriptions

Service	Key Deliverable	Description	What County Will Receive
Project Management	Project Management Planning	Phase 3 focuses on implementation. It will be critical to maintain and track against a detailed work plan. During kickoff, a work breakdown structure will be developed to include detailed tasks, resources assigned and hours estimated for completion across all project stages. The detailed work plan will be updated to incorporate implementation plan of the selected benefit administration vendor.	Detailed work plan, Gantt chart and project management across all stages
	Status Reporting & Talking Points	Weekly status reports will be released to project sponsors summarizing recent accomplishments, upcoming work, risks/issues, and budget. Talking points will be developed at	Weekly Status Report, Kickoff and Stage Gate Talking points

Service	Key Deliverable	Description	What County Will Receive
		the end of each stage to be shared with County leadership and other key stakeholders as needed.	
	People, Process & Technology Blueprints	People, process, and technology blueprints will be created for each pillar to identify the needed changes and how this will be built, tested, and rolled out across impacted teams at Clackamas County. The impacts will be incorporated into the communication plan.	Blueprints highlighting change impacts across the County
	Project Governance	Partner with project sponsors to manage project and ensure pillar objectives are realized through the stage gate process. Project sponsor meetings will focus on stage gate objectives, and decisions needed to mitigate risks and issues.	Project sponsor meetings with an emphasis on delivering scope on time and budget.
	Vendor Management Oversight	A timeline will be developed with benefit admin vendor's project manager. Regular status meetings will be scheduled to monitor status, resolve issues, and successfully co-develop the implementation plan. A test plan will be developed to document test scenarios, and track and resolved risks and issues. A comprehensive implementation and rollout plan will be developed to track the specific tasks required across internal and external teams. A go/no-go checklist will be developed to identify readiness for go-live. An implementation checklist, including the first production file exchange, will be supported by go-live monitoring.	Detailed implementation plan, Benefit admin vendor status meetings, Testing plan, Rollout Plan, go/no-go checklist, implementation checklist, go-live monitoring
Change Management	Change Management Plan	A comprehensive change management plan will be developed to support needs for sponsorship, individual engagement, stakeholder engagement, communication plan and organizational transformation.	Change Management Plan
	Change Workshops	Change workshops designed to affect change that engage impacted individuals and teams in order to support them through their transition. Change tools will be tailored with appropriate communication, sponsorship, skill development, and result measurement by understanding their interests.	Change Workshop Series including but not limited to: Using Data to Tell the Value Story of Benefits, Vendor Management, and Creating Engaging Benefits Communications.
	Stakeholder Engagement	People, process, and technology blueprints will be developed for each pillar to describe the impact to stakeholders across Clackamas County. We will meet with impacted teams early and often to ensure we engage managers and supervisors and help them embrace the necessary change themselves. We will develop a schedule to introduce changes that impact their organizations. Talking points will provide managers with the information and support they need to succeed in their	Pillar blueprints, Stakeholder timeline and talking points

Service	Key Deliverable	Description	What County Will Receive
		role as change champions and resistance managers during the change.	
	Communication Plan	Effective communications will target audiences impacted at various phases of the project and capitalize on the preferred methods of change messages. The communication plan will document the communications needed for target audiences and the timeline they will be released. Ongoing communication will provide project transparency and keep stakeholders updated. Engaging communications for employees to share what to expect with the rollout of the new vendor solution.	Communication Plan with communications, owner and timeline.
	Org Transformation	Assess the org transformation needs related to pillar objectives. Develop new org structure. Provide support to staff in their transitions by developing up to four training and skill sessions in areas including benefit administration vendors solution processes, Power BI "Basic Training," vendor management practices, and consultative benefits services model. Optimize the organization to fill resource gaps through matching staff skill sets with job descriptions.	Redesign org structure, refresh job descriptions, and conduct skills/training sessions
Vendor Selection	Confirm outsourced functions & draft RFP	Meet with benefit team leadership to determine specific functions to outsource. Review RFI responses in order to optimize RFP. Draft RFP.	Outsourcing function decisions, RFP drafted and made available to procurement to post publicly.
	Support Vendor Selection	Support for vendor selection including meeting with procurement to answer questions about the RFP, meet with reviewers to help score responses, and join demos or interviews with vendors to support selection.	Support provided to benefit leadership to help select the benefit vendor.
	Support onboarding of vendor	Review vendor proposal and contract. Work to support vendor onboarding to ensure proposed plan will achieve desired objectives	Optimized benefit vendor implementation plan.
	Refresh BRC	Work with benefits team to review BRC practices and make recommendations on how to optimize the model based on other industry examples.	Optimize the BRC based on other industry examples.
	Other Benefit Strategy Support	Upon request, provide additional benefit strategy services	Benefit SME is available to provide benefit strategy support.
Benefits Transformation	Refresh communications	A thorough review of all employee and member-facing benefits communication, mapping of the employee journey, and validation of current benefits content. Brainstorming workshop on creating internal engaging benefits branding.	Full audit of a current communication state, opportunities for improvement, and roadmap

Service	Key Deliverable	Description	What County Will Receive
		Develop assets to engage employees and support management with telling the value proposition of benefits. Rollout Employee Engagement.	for needed changes. Benefits branding and internal marketing assets; cascading communication campaign by the audience for ease of launch; ability to measure results
	Develop consultative benefit service offering processes	Develop processes and tools for consultative benefits developed to support future state.	Tools to create a new consultative model from administrative model.
	Update vendor management processes	Develop vendor management processes. Engage vendors on new process, SLAs and annual summit. Support monitoring vendors and report on SLAs.	Refreshed vendor management processes including SLAs and monitoring approach, Vendor meetings to engage on new approach.
	Prepare for dependent audit	Review of all current dependent eligibility plan language, the process for adding dependents, and documentation review. Build audit & controls into a process flow. Work with impacted County teams to update processes.	Results of current state review with suggestions on formalizing next steps in a dependent audit, other audit and control processes updated.
	Minimize Manual Processing	Update processes to reflect changes to PS and benefit admin vendor. Work with impacted County teams to update processes. Support vendor testing. Support go-live and monitor/address issues	Manual processes reduced and eliminated where possible, Vendor testing and go-live monitoring
Data & Reporting	Stand up Power BI and operationalize reports (up to 3 dashboards and 6 reports)	Stand up Power BI in production (develop up to 3 dashboards and 6 reports). Improve data access and develop reports and dashboards in Power BI to inform benefit administration, including developing metrics to support Performance Clackamas. Work with benefits team to operationalize up to 3 dashboards and 6 reports. Determine users/audience that will be given access to dashboards and reports.	Stand up Power BI in production and make available to benefits and WDM team, develop up to 3 dashboards and 6 reports.
	"Basic Training" for Benefits, WDM, and TS how to use Power BI and other data solutions	Conduct basic training with benefits, workforce data management, and technology services teams. Run a series of "basic training" workshops to share how to use the Power BI solution. Conduct training on other data solutions such as automated data exchange and data modeling.	"Basic training" for internal team on Power BI and data validation.
	Create Combined Data Model	Use PeopleSoft to its maximum capacity to drive more effective benefits operations with a solid employee of record	Updated data model to deliver reports, dashboards

Service	Key Deliverable	Description	What County Will Receive
		data. Create a data model combining data from PeopleSoft, Benefits Admin Vendor, and Benefit Carriers. Operationalize benefits data mart to support ongoing benefit reporting and dashboard needs.	and automated file exchanges to vendors.
	Automate data exchange with benefit admin vendor and benefit carriers	Develop requirements for vendor data feeds and build data solutions to automate data feeds with benefits vendors that have capability. Support creation of automated data exchanges with benefit admin vendor and benefit carriers.	Automated file exchanges in order to eliminate enrollment data entry (when possible depending on benefit vendor capabilities)
	Support Outsourcing including test and production file creation	Support transition to the outsourced administrator by supplying data extracts and troubleshooting and resolving data issues. Establish ongoing data exchange between Clackamas County and the outsourced administrator. Support creation of test and production files to achieve outsourced solutions.	Hands-on tech support for third party vendor transition including support for test and production file creation.

County Support Needed

Many factors go into determining the County’s estimated time commitment for phase 3. The County will need to determine between speed, quality and cost. **The following table for the County to provide a medium level of involvement for the project.** The County managers during kickoff and at each stage gate of the project to determine who will be required.



work. There are tradeoffs that the **includes a high-level estimate of time** estimates will be vetted by County complete the work and the hours

County Time Estimates (% FTE) By Stage

Stage Team	Kickoff Transformation and Post RFP	Vendor Selection & On-Boarding	Implement and engage with communication
Benefits	<p>50-75%</p> <ul style="list-style-type: none"> • Make decisions on outsourced functions • Provide access to communications for audit • Participate in working sessions for process development • Provide feedback on desired dashboards and reports for production Power BI instance • Participate in Power BI basic training 	<p>50-75%</p> <ul style="list-style-type: none"> • Grade proposals and meet with vendors • Support developing aligned timeline with benefit vendor • Engage with other vendors based on new vendor management process 	<p>50-75%</p> <ul style="list-style-type: none"> • Conduct testing of vendor solution • Participate in training and skill development • Engage with other teams to share impacts of implementation • Support rollout of employee communications
WDM	<p>15-30%</p> <ul style="list-style-type: none"> • Provide input to support making decisions on outsourced functions • Provide feedback on PS data structures in order to stand up production Power BI instance • Participate in Power BI basic training 	<p>10-20%</p> <ul style="list-style-type: none"> • Grade proposals and meet with vendors • Support developing aligned timeline with benefit vendor 	<p>15-30%</p> <ul style="list-style-type: none"> • Conduct testing of vendor solution • Participate in training and skill development • Determine if the vendor solution has downstream impacts on PS data or payroll

TS	<p>10-20%</p> <ul style="list-style-type: none"> • Provide technical access to standup Power BI in production • Support technical needs regarding Power BI 	<p>10-20%</p> <ul style="list-style-type: none"> • Grade proposals and meet with vendors • Support developing aligned timeline with benefit vendor 	<p>10-20%</p> <ul style="list-style-type: none"> • Provide technical access to benefit vendor • Provide technical access to support automated file exchange • Provide technical access to support vendor testing
Other Teams	<p>TBD</p> <p>Engage via communications sharing expectations of project and timeline</p>		<p>TBD</p> <p>Engage via communications and on any process or technology impacts</p>

Fees

Compelling Reason Consultants are proposing the following team with associated rates. The project timeline above includes an estimate of hours to support the work in this proposal. For each role, the high estimate reflects the upper limit of hours to be delivered on a not-to-exceed basis. If additional time, effort, or scope are required, Compelling Reason Consultants will work with the project sponsor to estimate a necessary change order. With the timeline being pushed into calendar year 2022, any additional scope documented via change orders may include a rate increase of up to 6 percent. In the unlikely event that a resource is not available when the project is initiated or during the extended project duration, we will work to provide an alternative resource for approval by the project sponsor.

Resource	Role	Rate (\$/hr)	Hours (Low)	Hours (High)
Erik Hanna	<p>Project & Change Management:</p> <ul style="list-style-type: none"> • Project Plan & Tracking • Status Reporting • Stakeholder Management • Test Plan Management • Issue Tracking & Resolution • Rollout/Implementation Plan & Tracking • Organizational Transformation 	\$145/hr	660	846
Jill Freeman	<p>Benefit Operations Change Consultant:</p> <ul style="list-style-type: none"> • HR and Benefits Communications • Benefit Operations Optimization • Process Design • Vendor Management • Testing Support 	\$145/hr	950	1100

Resource	Role	Rate (\$/hr)	Hours (Low)	Hours (High)
	<ul style="list-style-type: none"> Stakeholder Engagement Change Communications Organizational Transformation Training & Skills Development Plan 			
Jim Russel	Benefits Strategy Consultant: <ul style="list-style-type: none"> Draft RFP Vendor Selection Support Benefit Review Committee Strategy 	\$175/hr	260	325
Joseph Jonathon	Data Solutions Consultant: <ul style="list-style-type: none"> Data analysis, architecture and implementation Extracting PeopleSoft data Power BI setup Data visualizations using Power BI Automating Data exchanges with benefit vendors Test and Production File Support 	\$200/hr	500	600
Kelly Jensen	Project Sponsor Governance Change Management Subject Matter Expert	\$175/hr	120	160
			Low	High
		Total Hours	2490	3031
		Cost Estimate		\$487,045

Future scoped work may include the following:

- Optimization of benefits-related impacts from Leave Administration
- Leave Administration service delivery optimization
- Wellness program service delivery optimization

Future work will be negotiated and agreed upon with signed amendment by both parties.



Clackamas County Sheriff's Office

ANGELA BRANDENBURG
Sheriff

September 7, 2021

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of the Intergovernmental Agreement with the Oregon State Marine Board (OSMB) for enforcement related to recreational boating in Oregon

Purpose/Outcome	The Sheriff's Office provides marine patrol enforcement on all waters within Clackamas County, including six lakes and six major rivers. This Operating Plan reimburses the Sheriff's Office for expenses as outlined in the Plan attached.
Dollar Amount and Fiscal Impact	The fiscal Year 2021-22 Operating Plan totals \$432,825.00 reimbursable by OSMB. The fiscal Year 2022-23 Operating plan totals \$459,599.00 reimbursable by OSMB.
Funding Source	The Oregon State Marine Board is the source of funding
Duration	Effective July 1, 2021, through June 30, 2023
Strategic Plan Alignment	The plan, and subsequent amendments, provides funding for patrol services on all Clackamas County waters; to include investigation of boating law violations and boating accidents, examination of boats, and other services. Thus, helping to ensure safe, healthy, and secure communities.
Previous Board Action/Review	The OSMB operating plan is approved annually by the Board of County Commissioners
Counsel Review	Andrew Naylor via email 8/10/2021
Contact Person	Nate Thompson – Office (503) 572-7118
Contract No.	IGA No. 250-2123CLACKAMASCOUNTY-000

BACKGROUND:

Funds from the Marine Board operating plan are used to conduct enforcement related to recreational boating in Oregon, including alerting the public to unsafe boating conditions, assisting boaters and providing search and rescue services, and investigating complaints of boating law violations and boating accidents.

RECOMMENDATION:

Staff respectfully recommends the board of County Commissioners take the following actions:

1. Approve the Intergovernmental Agreement between the State of Oregon and Clackamas County concerning the enforcement related to recreational boating.
2. Authorize Sheriff Angela Brandenburg to sign the Intergovernmental Agreement on behalf of the Board of County Commissioners.

Respectfully submitted,

Michael Copenhaver
Undersheriff

INTERGOVERNMENTAL AGREEMENT

Agreement No. 250-2123CLACKAMASCOUNTY-000

This Agreement is between the State of Oregon acting by and through its State Marine Board (“OSMB”) and Clackamas County (“County”), each a “Party” and, together, the “Parties”.

SECTION 1: AUTHORITY

This Agreement is authorized by ORS 190.110 and ORS 830.110.

SECTION 2: PURPOSE

The purpose of this Agreement is to provide funding to the County to conduct enforcement related to recreational boating in Oregon. Specific activities and assessments are detailed in “Exhibit A” attached hereto and by this reference made a part hereof.

SECTION 3: EFFECTIVE DATE AND DURATION

This Agreement is effective on July 1, 2021, or the date of the last signature, whichever occurs last) (“Effective Date”), and terminates on June 30, 2023, unless terminated earlier in accordance with Section 17.

SECTION 4: AUTHORIZED REPRESENTATIVES

4.1 OSMB’s Authorized Representative is:

Randy Henry
435 Commercial Street NE Suite 400, Salem OR 97301
503-378-4597
503-378-2612 Office
Randy.H.Henry@state.or.us

4.2 County’s Authorized Representative is:

Sheriff Angela Brandenburg
Clackamas County Sheriff’s Office
2223 Kaen Rd, Oregon City OR 97045
(503) 655-8218

4.3 A Party may designate a new Authorized Representative by written notice to the other Party.

SECTION 5: RESPONSIBILITIES OF EACH PARTY

- 5.1 County shall perform the work set forth on Exhibit A, attached hereto and incorporated herein by this reference.
- 5.2 OSMB shall pay County as described in Section 7.

SECTION 6: BOAT OWNERSHIP

- 6.1 The ownership of any boat purchased by the County during the term of this agreement shall be vested with the County regardless of funding source, subject to Section 6.2 and Section 29.
- 6.2 During the term of this agreement and for the useful life of the boat or major piece of equipment, the County agrees to maintain in good working condition any boat or major piece of equipment purchased in whole or in part by the County with funds received from OSMB, pursuant to this agreement and prior agreements between County and OSMB. Preventative maintenance schedules for boats and trailers will be established and adhered to. Further, upon the trade-in or sale of a boat or major piece of equipment purchased, in whole or part, with funds received pursuant to this agreement, County shall apply any proceeds from the trade-in or sale to law enforcement activities approved by OSMB, with such approval not to be unreasonably withheld. Notwithstanding Section 29, upon default of this Agreement or notice from OSMB to County of the termination of funding described in ORS 830.140 or under Section 19 Nonappropriation, all boats and major pieces of equipment purchased, in whole or in part, with funds received pursuant to this agreement or previous agreement between the OSMB and County, shall be returned to the OSMB for reassignment if OSMB requests that the boat or major pieces of equipment be returned to OSMB. Upon OSMB's request, County agrees to permit the transfer of a boat purchased, in whole or part, with funds received pursuant to this agreement to another county.

SECTION 7: COMPENSATION AND PAYMENT TERMS

- 7.1 OSMB shall, upon receipt and approval of expenditure documentation, pay to the County an amount not to exceed the following amounts for the agreement term

Year 1 (July 1, 2021 - June 30, 2022)	\$432,825
Year 2 (July 1, 2022 - June 30, 2023)	\$459,599

- 7.2 Payment requests (i.e., quarterly, as provided in Exhibit A. section J.) shall be only for authorized services provided by the County pursuant to this agreement and for costs actually incurred by the County in conjunction with such services (including salaries/benefits,

supplies or purchases of boats/equipment). At OSMB's discretion, federal funds may be used for payment.

- 7.3 County shall be responsible for providing employment-related benefits and deductions that are required by law, including but not limited to federal and state income tax deductions, workers' compensation coverage, and contributions to the Public Employees Retirement System.

This agreement is subject to all applicable federal Assurances specified in Exhibit C attached hereto and by this reference made a part hereof. If applicable, County shall provide the OSMB its Annual Comprehensive Financial Report as required in the Single Audit Act of 1984, 31 U.S.C. §§7501-7507 (1994) as amended by Pub.L. 104-156, §§ 1-3, 110 Stat. 1397 (1996). At the end of each fiscal year during the term of this agreement, the County has the duty to request the amount of federal pass-through dollars included in the payments made by the OSMB to the County during that fiscal year.

SECTION 8: CONDITION OF PERFORMANCE

In accordance with 2 CFR Part 200, the OSMB's performance is conditioned upon the County's compliance with federal, state and local laws and regulations, including but not limited to, the following:

- 8.1 County shall comply and, if applicable, require a subcontractor to comply, with the applicable audit requirements and responsibilities set forth in 2 CFR Part 200.
- 8.2 The applicable Code of Federal Regulations (CFR) sections and OMB Circulars governing expenditure of federal funds. County shall ensure any organization to which funds are passed comply with CFR and OMB requirements
- 8.3 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 Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection County regulations (40 CFR part 15).
- 8.4 Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub.L. 94-163, 89 Stat. 871).
- 8.5 The Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3).
- 8.6 The Davis-Bacon Act (40 U.S.C. 276a to 276a -7) as supplemented by Department of Labor regulations (29 CFR Part 5).
- 8.7 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).

SECTION 9: REPRESENTATIONS AND WARRANTIES

County represents and warrants to OSMB that:

- 9.1 County is a county, duly organized and validly existing. County has the power and authority to enter into and perform this Agreement;
- 9.2 The making and performance by County of this Agreement (a) have been duly authorized by County, (b) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of County's charter or other organizational document and (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which County is party or by which County may be bound or affected. No authorization, consent, license, approval of, or filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by County of this Agreement, other than those that have already been obtained;
- 9.3 This Agreement has been duly executed and delivered by County and constitutes a legal, valid and binding obligation of County enforceable in accordance with its terms;
- 9.4 County has the skill and knowledge possessed by well-informed members of the industry, trade or profession most closely involved in providing the services under this Agreement, and County will apply that skill and knowledge with care and diligence to perform its obligations under this Agreement in a professional manner and in accordance with the highest standards prevalent in the related industry, trade or profession; and
- 9.5 County shall, at all times during the term of this Agreement, be qualified, professionally competent, and duly licensed to perform its obligations under this Agreement.

The representations and warranties set forth in this section are in addition to, and not in lieu of, any other representations or warranties provided by County.

SECTION 10: GOVERNING LAW, CONSENT TO JURISDICTION

This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively "Claim") between OSMB or any other agency or department of the State of Oregon, or both, and County 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 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 State of Oregon 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, to or from any Claim or from the jurisdiction of any court. COUNTY, BY EXECUTION

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

SECTION 11: CONTRIBUTION

- 11.1** If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 (a “Third Party Claim”) against a Party (the “Notified Party”) with respect to which the other Party (the “Other Party”) may have liability, the Notified Party shall promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party, along with the written notice, a copy of the claim, process and all legal pleadings with respect to the Third Party Claim that have been received by the Notified Party. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this Section and a meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party’s contribution obligation under this Section 10 with respect to the Third Party Claim.
- 11.2** With respect to a Third Party Claim for which OSMB is jointly liable with County (or would be if joined in the Third Party Claim), OSMB shall contribute to the amount of expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by County in such proportion as is appropriate to reflect the relative fault of OSMB on the one hand and of County on the other hand in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of OSMB on the one hand and of County on the other hand shall be determined by reference to, among other things, the Parties’ relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. OSMB’s contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if the State had sole liability in the proceeding.
- 11.3** With respect to a Third Party Claim for which County is jointly liable with OSMB (or would be if joined in the Third Party Claim), County shall contribute to the amount of expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by OSMB in such proportion as is appropriate to reflect the relative fault of County on the one hand and of OSMB on the other hand in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of County on the one hand and of OSMB on the other hand shall be determined by reference to, among other things, the Parties’ relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. County’s contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if it had sole liability in the proceeding.

SECTION 12: COUNTY DEFAULT

County will be in default under this Agreement upon the occurrence of any of the following events:

- 12.1** County fails to perform, observe or discharge any of its covenants, agreements or obligations under this Agreement;
- 12.2** Any representation, warranty or statement made by County in this Agreement or in any documents or reports relied upon by OSMB to measure the delivery of services, the expenditure of funds or the performance by County is untrue in any material respect when made;
- 12.3** County (a) applies for or consents to the appointment of, or taking of possession by, a receiver, custodian, trustee, or liquidator of itself or all of its property, (b) admits in writing its inability, or is generally unable, to pay its debts as they become due, (c) makes a general assignment for the benefit of its creditors, (d) is adjudicated as bankrupt or insolvent, (e) commences a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (f) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (g) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code, or (h) takes any action for the purpose of effecting any of the foregoing; or
- 12.4** A proceeding or case is commenced, without the application or consent of County, in any court of competent jurisdiction, seeking (a) the liquidation, dissolution or winding-up, or the composition or readjustment of debts of County, (b) the appointment of a trustee, receiver, custodian, liquidator, or the like of County or of all or any substantial part of its assets, or (c) similar relief in respect to County under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for a period of sixty consecutive days, or an order for relief against County is entered in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect).

SECTION 13: OSMB DEFAULT

OSMB will be in default under this Agreement if OSMB fails to perform, observe or discharge any of its covenants, agreements, or obligations under this Agreement.

SECTION 14: REMEDIES

- 14.1** In the event County is in default under Section 12, OSMB may, at its option, pursue any or all of the remedies available to it under this Agreement and at law or in equity, including, but not limited to: (a) termination of this Agreement under Section 17, (b) reducing or

withholding payment for work or Work Product that County has failed to deliver within any scheduled completion dates or has performed inadequately or defectively, (c) requiring County to perform, at County's expense, additional work necessary to satisfy its performance obligations or meet performance standards under this Agreement, (d) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief, or (e) exercise of its right of recovery of overpayments under Section 15 of this Agreement or setoff, or both. These remedies are cumulative to the extent the remedies are not inconsistent, and OSMB may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.

14.2 In the event OSMB is in default under Section 12 and whether or not County elects to exercise its right to terminate this Agreement under Section 17.3.3, or in the event OSMB terminates this Agreement under Sections 17.2.1, 17.2.2, 17.2.3, or 17.2.5, County's sole monetary remedy will be (a) for work compensable at a stated rate, a claim for unpaid invoices for work completed and accepted by OSMB, for work completed and accepted by OSMB within any limits set forth in this Agreement but not yet invoiced, for authorized expenses incurred, and for interest within the limits of ORS 293.462, less any claims OSMB has against County, and (b) for deliverable-based work, a claim for the sum designated for completing the deliverable multiplied by the percentage of work completed on the deliverable and accepted by OSMB, for authorized expenses incurred, and for interest within the limits of ORS 293.462, less previous amounts paid for the deliverable and any claims that OSMB has against County. In no event will OSMB be liable to County for any expenses related to termination of this Agreement or for anticipated profits. If previous amounts paid to County exceed the amount due to County under this Section 14.2, County shall promptly pay any excess to OSMB.

SECTION 15: RECOVERY OF OVERPAYMENTS

If payments to County under this Agreement, or any other agreement between OSMB and County, exceed the amount to which County is entitled, OSMB may, after notifying County in writing, withhold from payments due County under this Agreement, such amounts, over such periods of times, as are necessary to recover the amount of the overpayment.

SECTION 16: LIMITATION OF LIABILITY

EXCEPT FOR LIABILITY ARISING UNDER OR RELATED TO SECTION 11, NEITHER PARTY WILL BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, OR OTHER INDIRECT DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, REGARDLESS OF WHETHER THE LIABILITY CLAIM IS BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, PRODUCT LIABILITY OR OTHERWISE. NEITHER PARTY WILL BE LIABLE FOR ANY DAMAGES OF ANY SORT ARISING SOLELY FROM THE TERMINATION OF THIS AGREEMENT IN ACCORDANCE WITH ITS TERMS.

SECTION 17: TERMINATION

17.1 This Agreement may be terminated at any time by mutual written consent of the Parties.

17.2 OSMB may terminate this Agreement as follows:

17.2.1 Upon 30 days advance written notice to County;

17.2.2 Immediately upon written notice to County, if OSMB fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient in OSMB's reasonable administrative discretion, to perform its obligations under this Agreement;

17.2.3 Immediately upon written notice to County, if federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that OSMB's performance under this Agreement is prohibited or OSMB is prohibited from paying for such performance from the planned funding source;

17.2.4 Immediately upon written notice to County, if County is in default under this Agreement and such default remains uncured 15 days after written notice thereof to County; or

17.2.5 As otherwise expressly provided in this Agreement.

17.3 County may terminate this Agreement as follows:

17.3.1 Immediately upon written notice to OSMB, if County fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient in County's reasonable administrative discretion, to perform its obligations under this Agreement;

17.3.2 Immediately upon written notice to OSMB, if federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that County's performance under this Agreement is prohibited or County is prohibited from paying for such performance from the planned funding source;

17.3.3 Immediately upon written notice to OSMB, if OSMB is in default under this Agreement and such default remains uncured 15 days after written notice thereof to OSMB; or

17.3.4 As otherwise expressly provided in this Agreement.

17.4 Upon receiving a notice of termination of this Agreement, County will immediately cease all activities under this Agreement, unless OSMB expressly directs otherwise in such notice. Upon termination, County will deliver to OSMB all documents, information, works-in-progress, Work Product and other property that are or would be deliverables under the Agreement. And upon OSMB's reasonable request, County will surrender all documents, research or objects or other tangible things needed to complete the work that was to have been performed by County under this Agreement.

SECTION 18: INSURANCE

County shall maintain insurance, or self insurance, as set forth in Exhibit D, attached hereto and

incorporated herein by this reference.

SECTION 19: NONAPPROPRIATION

OSMB's obligation to pay any amounts and otherwise perform its duties under this Agreement is conditioned upon OSMB receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow OSMB, in the exercise of its reasonable administrative discretion, to meet its obligations under this Agreement. Nothing in this Agreement may be construed as permitting any violation of Article XI, section 7 of the Oregon Constitution or any other law limiting the activities, liabilities or monetary obligations of OSMB.

SECTION 20: AMENDMENTS

The terms of this Agreement may not be altered, modified, supplemented or otherwise amended, except by written agreement of the Parties.

SECTION 21: NOTICE

Except as otherwise expressly provided in this Agreement, any notices to be given relating to this Agreement must be given in writing by facsimile, email, personal delivery, or postage prepaid mail, to a Party's Authorized Representative at the physical address, fax number or email address set forth in this Agreement, or to such other addresses as either Party may indicate pursuant to this Section 21. Any notice so addressed and mailed becomes effective five (5) days after mailing. Any notice given by personal delivery becomes effective when actually delivered. Any notice given by email becomes effective upon the sender's receipt of confirmation generated by the recipient's email system that the notice has been received by the recipient's email system. Any notice given by facsimile becomes effective upon electronic confirmation of successful transmission to the designated fax number.

SECTION 22: SURVIVAL

All rights and obligations of the Parties under this Agreement will cease upon termination of this Agreement, other than the rights and obligations arising under Sections 6,10, 11, 15, 16 and 22 hereof and those rights and obligations that by their express terms survive termination of this Agreement; provided, however, that termination of this Agreement will not prejudice any rights or obligations accrued to the Parties under this Agreement prior to termination.

SECTION 23: SEVERABILITY

The Parties agree that 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 will not be affected, and the rights and obligations of the Parties will be construed and enforced as if the Agreement did not contain the particular term or provision

held to be invalid.

SECTION 24: COUNTERPARTS

This Agreement may be executed in several counterparts, all of which when taken together shall constitute one agreement, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the Agreement so executed constitutes an original.

SECTION 25: COMPLIANCE WITH LAW

In connection with their activities under this Agreement, the Parties shall comply with all applicable federal, state and local law.

SECTION 26: INDEPENDENT CONTRACTORS

The Parties agree and acknowledge that their relationship is that of independent contracting parties and that County is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265 or otherwise.

SECTION 27: INTENDED BENEFICIARIES

OSMB and County are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement provides, is intended to provide, or may be construed to provide any direct or indirect benefit or right to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of this Agreement.

SECTION 28: FORCE MAJEURE

Neither Party is responsible for any failure to perform nor any delay in performance of any obligations under this Agreement caused by fire, civil unrest, labor unrest, natural causes, or war, which is beyond that Party's reasonable control. Each Party shall, however, make all reasonable efforts to remove or eliminate such cause of failure to perform or delay in performance and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement. OSMB may terminate this Agreement upon written notice to County after reasonably determining that the failure or delay will likely prevent successful performance of this Agreement.

SECTION 29: SECURITY INTEREST

County, in consideration of OSMB's provision of services described in Exhibit A, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby grants OSMB a continuing security interest in and so pledges and assigns to OSMB all of

the rights of County and all proceeds and products in the boats and equipment purchased pursuant to OSMB's authority under ORS 830.140, including, but not limited to this agreement ("Collateral"). County hereby irrevocably authorizes OSMB at any time and from time to time to file in any filing office in any Uniform Commercial Code jurisdiction any financing statements and amendments thereto to complete the attachment, perfection and first priority of, and the ability of OSMB to enforce, OSMB's security interest in the Collateral, including, but not limited to, causing OSMB's name to be noted as secured party on any certificate of title for a titled good. County will not, or will not offer to, sell or otherwise dispose of the Collateral or any interest in the Collateral except with receipt of OSMB's prior written approval. Upon the failure by County to keep, observe or perform any provision of this agreement, without any other notice to or demand upon County, OSMB shall have in any jurisdiction in which enforcement of this agreement is sought, in addition to all other rights and remedies, all rights, privileges, powers and remedies of a secured creditor provided by the Uniform Commercial Code and any additional rights and remedies which may be provided to a secured party in any jurisdiction in which the Collateral or a part thereof is located, at law, in equity, or otherwise, including, without limitation, its right to take immediate possession of the Collateral.

SECTION 30: ASSIGNMENT AND SUCCESSORS IN INTEREST

County may not assign or transfer its interest in this Agreement without the prior written consent of OSMB and any attempt by County to assign or transfer its interest in this Agreement without such consent will be void and of no force or effect. OSMB's consent to County's assignment or transfer of its interest in this Agreement will not relieve County of any of its duties or obligations under this Agreement. The provisions of this Agreement will be binding upon and inure to the benefit of the Parties hereto, and their respective successors and permitted assigns.

SECTION 31: SUBCONTRACTS

County shall not, without OSMB's prior written consent, enter into any subcontracts for any of the work required of County under this Agreement. OSMB's consent to any subcontract will not relieve County of any of its duties or obligations under this Agreement.

County shall take all reasonable steps to cause its contractor(s) that are not units of local government as defined in ORS 190.003, if any, to 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 now or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of County's 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 County's contractor from and against any and all Claims.

SECTION 32: TIME IS OF THE ESSENCE

Time is of the essence in County's performance of its obligations under this Agreement.

SECTION 33: MERGER, WAIVER

This Agreement and all exhibits and attachments, if any, constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver or consent under this Agreement binds either Party unless in writing and signed by both Parties. Such waiver or consent, if made, is effective only in the specific instance and for the specific purpose given. EACH PARTY, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

SECTION 34: RECORDS MAINTENANCE AND ACCESS

County shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, County shall maintain any other records, books, documents, papers, plans, records of shipments and payments and writings of County, whether in paper, electronic or other form, that are pertinent to this Agreement in such a manner as to clearly document County's performance. All financial records, other records, books, documents, papers, plans, records of shipments and payments and writings of County, whether in paper, electronic or other form, that are pertinent to this Agreement, are collectively referred to as "Records." County acknowledges and agrees that OSMB and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives will have access to all Records to perform examinations and audits and make excerpts and transcripts. County shall retain and keep accessible all Records for a minimum of six (6) years, or such longer period as may be required by applicable law, following termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later. Subject to foregoing minimum records retention requirement, County shall maintain Records in accordance with the records retention schedules set forth in OAR Chapter 166.

SECTION 35: HEADINGS

The headings and captions to sections of this Agreement have been inserted for identification and reference purposes only and may not be used to construe the meaning or to interpret this Agreement.

SECTION 36: ADDITIONAL REQUIREMENTS

County shall comply with the additional requirements set forth in Exhibit C, attached hereto and incorporated herein by this reference.

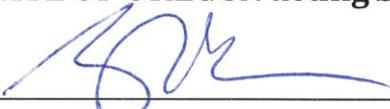
SECTION 37: AGREEMENT DOCUMENTS

This Agreement consists of the following documents, which are listed in descending order of precedence: this Agreement less all exhibits, attached Exhibit A (the Statement of Work), Exhibit B (Boating Safety Action Plan), Exhibit C (Federal Assurances), and Exhibit D (Insurances).

SECTION 38: SIGNATURES

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates set forth below.

STATE OF OREGON acting by and through its State Marine Board



Larry Warren, Director

8-19-21

Date

Clackamas County Sheriff's Office

County Sheriff

Date

Signature

Date

Approved for Legal Sufficiency in accordance with ORS 291.047

DOJ Attorney

Date

EXHIBIT A

STATEMENT OF WORK

THE COUNTY AGREES TO:

- A. Enforce the applicable provisions of the Oregon Revised Statutes, Chapters 830 and 704 and Oregon Administrative Rules, Chapter 250.
- B. Investigate complaints of boating law violations and boating accidents as specified in the current version of the OSMB Policy and Procedures Manual, incorporated by reference herein.
- C. Alert the public to unsafe boating conditions.
- D. Assign duties under this agreement to personnel who have completed training and received certification at the Marine Law Enforcement Academy. Boating law enforcement personnel assigned by the County shall be mentally and physically capable of performing required duties. Standards of performance, discipline of officers and the control of personnel performing services pursuant to this agreement shall be the responsibility of the County. County agrees that assigned personnel shall wear a Coast Guard approved personal flotation device (life jacket) while on board a boat.
- E. Provide assistance to boaters and provide search and rescue services as noted in the policy and procedures manual.
- F. Provide law enforcement examinations of boats.
- G. Carry out all aspects of the Boating Safety Program: The Boating Safety Action Plan, Budget and Maintenance Schedule, described in Exhibit B, attached here to and incorporated by reference herein.
- H. Provide OSMB with a revised Boating Safety Program: The Boating Safety Action Plan, Budget and Maintenance Schedule, described in Exhibit B attached here to and incorporated by reference herein no later than April 1 for every year the Agreement is effective.
- I. Provide OSMB with monthly activity reports to the OSMB database by the end of each month.
- J. Send quarterly invoices to: Boating Safety Program Fiscal Analyst, Oregon State Marine Board, and 435 Commercial St. NE, Salem, OR 97309. Invoices must be submitted within 45 days following the end of the quarter.
- K. Furnish and supply all necessary labor, supervision, equipment, communications, facilities and supplies necessary to provide the level of service required to fulfill this

agreement.

- L. Submit all requests for boat and related equipment repairs, to which OSMB holds title, to OSMB for approval. Approval is also required for the vendor providing the services.

OSMB AGREES TO:

- A. Provide County an orientation to OSMB policies, regulations, and administrative rules necessary to meet the purpose of this agreement.
- B. Provide required training through the Marine Law Enforcement Academy held once a year.
- C. Provide funds for the purchase of patrol boats, required equipment, fuel, and boat maintenance.
- D. Provide access to and training for the use of OSMB's law enforcement data base.
- E. Make payment to County within 45 days of receiving and approving invoice from County.

EXHIBIT B
(BOATING SAFETY ACTION PLAN)

(SEE ATTACHED)

EXHIBIT C

OMB Approval No. 0348-0040

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

- | | |
|---|---|
| <ol style="list-style-type: none"> 1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application. 2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award, and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives. 3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain. 4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency. 5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F). 6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation | <p>Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.</p> <ol style="list-style-type: none"> 7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases. 8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds. |
|---|---|

Previous Edition Usable

Authorized for Local Reproduction

Standard Form 424B (Rev. 7-97)
Prescribed by OMB Circular A-102

EXHIBIT D

INSURANCE

During the term of this agreement, the County shall provide insurance to cover all loss; damage or injury to the equipment purchased under this agreement, in an amount no less than the purchase price thereof. Such insurance shall be provided by the County through an insurer duly authorized to do business in the State of Oregon but may be provided by self-insurance. Any proceeds from insurance or self-insurance shall be applied to the repair or replacement of the damaged equipment unless the County received prior written direction or authorization from the OSMB to otherwise dispose of the proceeds.

Boating Safety 2021-23 Action Plan



for Clackamas County Sheriff's Office

Agency

Address: 2223 S Kaen Rd Oregon City OR 97045

Phone #: 503-655-8218

Contact for Questions: Sgt. Nate Thompson 503-572-7118

Patrol Hours:	3500
Program Hours:	3260
Total Hours:	6760

**Total Available Hours
from Page 7**

10,080.00

Your Action Plan Overview

Our high use waterways continue to be the Willamette River both above and below the falls. During the winter and spring season we have heavy usage below the falls from fishing boat traffic. Most of these boats are motorized but later into the spring we see an increase in non-motorized users. The summer months we have heavy traffic both above and below the falls. Mostly recreational traffic with some fishing and commercial traffic. Interactions between motorized, non-motorized and PWC boaters is a concern on the Willamette in the summer due to the congestion, heavy use and complex rules regarding this area.

We expect a huge increase in wake surfing activities on the upper Willamette near the 10th street boat ramp. This is the only section of the Willamette River in our county that does not have regulations that restrict or prohibit this activity. This is a short section of river that has a large public dock and several floating homes.

With last year's new rules on the upper Willamette and this year's new rules on the lower Willamette River we expect to spend a significant amount of our time educating boaters. After spending all last summer educating boater on the new rules for the upper Willamette, we will have even more work educating them on the changes for the lower Willamette River.

We have not had any increases in staffing or funding to specifically target education and enforcement on these new rules for both the upper and lower Willamette River. We will continue to make as many contacts with boaters as possible with our current staffing levels.

The Clackamas River sees very heavy traffic during the warm summer months. With five to seven thousand people floating down the river a day. Patrol of this area can be a strain on resources. With the reduction of the PFD fine we will be issuing citations and providing boaters with PFD's.

The reservoirs on the Clackamas River will continue to be patrol by Marine Patrol year-round and have an increased patrols July through September through a contract with PGE. With the fire damage to the upper Clackamas River Corridor we don't expect there to be any access to the upper Clackamas River. This was not an area heavily patrol due to the low boater use on that section of the river.

This years Patrol hours and Program hours are the same as last year. We should have the same staffing levels this year as last. These hours only including the hours for our full time Marine Deputies. There could be more patrol hours than planned if all of the seasonal positions are filled. Additionally several of the positions are for MSO's and those are secondary officers on the boat and their hours are not counted towards the program and patrol hours.

Annual Patrol Plan: 3500 Hours

On the lower Willamette River we will focus on the area of Meldrum Bar. This area is very popular with personal water crafts. PWC's and boats, both motorized and non-motorized, in this area are often operated in close proximity to each other. Our patrol will focus on unsafe operation, fail to maintain lookout, Navigation Rules as well as rules specific to PWC's. We will utilize patrol boats as well as PWC's to patrol this area.

We will also focus on the area from the Falls to the Waverly Marina due to the new rules prohibiting wake surfing and restricting the distance of boats from docks both while towing and operating over slow no wake speeds. This area has several locations that are less than 400 feet across between the docks and with the new rules it will make most towed water sports prohibited. Educating the public on this and the other new rules will be a complicated and time consuming.

The Clackamas River has a large amount of non-motorized traffic during the summer months. On hot days five to seven thousand people float between Barton Park and Carver Park. There are other areas of the river with heavy traffic but this area is by far the busiest. We will focus patrols on safety equipment such as PFD's and Sound Signaling devices as well as making sure we have compliance with water way access permits.

We contract with Portland General Electric to provide patrols to their Reservoirs which includes, Estacada Lake, North Fork Reservoir, Frog Lake, Lake Harriet and Timothy Lake.

These lakes have very high use in the summer months. Most are slow speed lakes so they do not have a lot of high-risk activities. North Fork reservoir is the busiest with a mixed user group. Patrols of these waterway will be focused on PFD's and other safety equipment at the ramps and on the water. On water and shore patrol will prioritize any high-risk behavior. With the restrictions on wake surfing in most of the other waterways in Clackamas County we foresee a major increase in wake surfing on North Fork Reservoir. This waterway is narrow and has a diverse user group and this major increase could lead to congestion and safety concerns.

We are currently still working with OSP Fish and Game to contact fishermen. They have a boat slip at our boat house that they are able to use. We strongly encourage Deputies to patrol with OSP so that they can learn from each other and work as a team.



Boating Safety Program Waterbodies To Be Patrolled

County/Agency: Clackamas County Sheriff's Office

Waterways (Inland & Ocean)	Specific Area	Start MM/YY	End MM/YY	Add'l Comments
Willamette River				Heavy use from both motorized and non motorized. Many new rules and regulations in educate boaters on.
Clackamas River				Heavy year round use both motorized and non. Fishing traffic in winter spring and summer. Heavy non motorized use in summer months.
Sandy River				Patrol during winter and spring for fishing traffic. Summer patrol are minimal due to water level and low use. Use has increased due to the alcohol ban on the Clackamas River.
Molalla River				Patrol during winter and spring for fishing traffic. Summer patrol are minimal due to water level and low use.
Tualatin River				Most patrols are during the summer months. There is mixed use traffic.
Pudding River				Very low use year round. Mixed motor and non motorized traffic. Most traffic is during duck and goose hunting season.
North Fork Reservoir				Most of the focus during summer months. Heavy mixed use traffic. This is a PGE reservoir.
Estacada Lake				Most of the focus during summer months. Mixed use traffic with heavy non motorized use during summer months. This is a PGE Reservoir
Lake Oswego				Heavy use from both motorized and non motorized. Work with Lake Oswego Lake Patrol to address problem areas.
Timothy Lake				Fishing traffic both motorized and non. Lake has a 10mph speed limit. There are many camp sites only accessible by boat. This is a PGE reservoir
Lake Harriet				Mostly fishing traffic in the summer months this is a PGE reservoir.
Trillium Lake				Non motorized only lake. High traffic during the summer months.



Annual Program Plan 3260 Hours	
Instructor Training	Expectation: Note personnel involved or willing to be involved in providing training on OSMB behalf. Participation pre-approved by training coordinator.
	Sergeant Thompson will continue to teach the OSMB PWC course that is offered at Clackamas County. Sergeant Thompson, Deputy Belmont and Deputy Peterson will instruct at the Academy, Drift and Jet if their attendance is needed.
Training	Expectation: New or inexperienced DPSST certified marine officers will complete Marine Law Enforcement Academy, Drift Boat, White Water, Swift Water Rescue and other training as appropriate, and attend pre- and post-season meetings, if possible.
	Marine Deputy Ross Clemson will be attending the Drift and Jet operations this year.
Non-OSMB Training	Expectation: Training as per program standards to maintain high level of police skill, performance and certifications.
	Deputy's will participate in all required Sheriff's Office Training. To include monthly training in firearms and defensive tactics.
Maintenance	Expectation: Perform regular and appropriate maintenance such as winterization, oil changes, trailer bearings, basic repairs and other preventative work as needed.
	We will continue to perform basic repair and maintenance on our boats.
Waterway Markers	Expectation: Map and track OSMB-funded or approved waterway markers, maintain and confirm locations as per ORS, OAR, safety and informational requirements, maintain inventory.
	We currently maintain and place about 20 buoys on our waterways. We updated one of our boats with a davit so we can add and remove waterway markers more safely. With our moving water we have to pull, drop and store all of these waterway markers and anchors.

Hazard Mitigation	Expectation: Identify and respond to extraordinary waterway hazards through coordination with OSMB.
	We will continue to clear waterway hazards using Sheriff's Office resources. If a hazard is unable to be cleared we will reach out to OSMB for assistance.
Abandoned Boats	Expectation: Identify, assess, mitigate and investigate as appropriate. Coordinate with OSMB Abandoned Vessel Program manager.
	We do not have any abandoned boats currently in our property room but as these come in we will work with OSMB to dispose of these boats. We continue to monitor our area of operation for any abandoned or derelict vessel, if located we will document them and coordinate with OSMB.
Education	Expectation 1: Plan and implement public outreach strategies that teach public basic on-water safety skills. Expectation 2: Provide directly or through partners equivalency exam opportunities in your county.
	Clackamas County works with several schools of all age levels throughout the year to educate water safety. We also attend meeting with different adult groups to talk about boating safety. We do provide equivalence exams when requested. We have 3 Deputies trained as Boat Oregon instructors.
Trailing/Travel	Expectation: Note necessary trailering and traveling times specific to your AOR.
	Several lakes in the county have to have a boat trailered to them. Some are as long as a 2 hour commute. We pick route to and from these lakes so that other waterway can be checked and patrol at the same time. We have boats inside boathouses on both the upper and lower Willamette River. These boats are trailered several times a week to be fueled and cleaned.
Accident Investigation	Expectation: Follow investigation protocols. Notify Boat Accident Investigation Team of fatal or serious accidents. Fully evaluate for BUII. Complete reports within timeframe.
	Deputy Belmont has been trained in boat accident investigation and we also have a accident reconstruction team at the Sheriff's Office if needed.
Administrative	Expectation: Office duties required for program operations.
	Most administrative duties are completed by the Sergeant but some are done by the deputies. Although administrative duties are time consuming and necessary at the Clackamas County Marine program we will attempt to do shore and river patrol everyday.
HINS/Livery/Moorage Checks	Expectation: Provide HIN inspections as requested; inspect liveries annually for records compliance; check moorages annually to ensure registration compliance.
	We currently schedule HIN's on a regular basis and do livery and moorage checks several times a year depending on the need.

**Note: Programs are monitored for Road Patrol Assistance and other non-marine activities. Hours should be incidental to program. Also, avoid non-marine operations that cause overtime hours to be charged to marine funding.*

Boating Safety Program Proposed Costs



County/Agency: Clackamas County Sheriff

Allocation (some may not apply)	OSMB	County/Agency Contribution
LE Allocation:	\$432,825.00	
Boat Allocation:		
Special Emphasis:		
Total:	\$432,825.00	\$0.00
Proposed Program Costs:		
	OSMB	County/Agency Contribution
1. Personnel (Must match totals on Form A)	\$432,825.00	\$224,660.60
2. Operations and Maintenance (Must match totals on Form B)	\$0.00	\$170,287.00
3. Boat		
4. Total direct Proposed Program Cost (1+2+3, should equal Total in above section)	\$432,825.00	\$394,947.60

County/Agency Authorized Representative:

Jesse Ashby
Signature

4/21/21
Date

Jesse Ashby
Typed Name

503-786-5007
Telephone

Boating Safety Program



Proposed Personnel Costs – Form A

Note: “# of Hours” equals staff time dedicated to marine program. This may include overhead such as personal leave but should be proportional to their position (2080 hrs is full time). Note that total hours should be consistent with combined “Patrol” and “Program” hours on page 1.

County/Agency: Clackamas County Sheriff's

Employee Compensation				Compensation		
Name	Title	# of Hours	Cost per Hour	Total	OSMB	County/ Agency Cash Contribution
1. Full Time Supervisor	Sergeant	2,080.00	\$91.37	\$190,049.60	\$132,000.00	\$58,049.60
2. Full Time Deputy	Deputy	2,080.00	\$74.59	\$155,147.20	\$123,000.00	\$32,147.20
3. Full Time Deputy	Deputy	2,080.00	\$74.59	\$155,147.20	\$123,000.00	\$32,147.20
4. 6 Month Full Time Deputy	Deputy	1,040.00	\$74.59	\$77,573.60	\$32,825.00	\$44,748.60
5. Seasonal PGE contract Deputy	Deputy	400.00	\$38.20	\$15,280.00	\$0.00	\$15,280.00
6. Marine Services Officer	MSO	600.00	\$17.62	\$10,572.00	\$0.00	\$10,572.00
7. Marine Services Officer	MSO	600.00	\$17.62	\$10,572.00	\$0.00	\$10,572.00
8. Marine Services Officer	MSO	600.00	\$17.62	\$10,572.00	\$0.00	\$10,572.00
9. Marine Services Officer	MSO	600.00	\$17.62	\$10,572.00	\$0.00	\$10,572.00
10.				\$0.00		
11.				\$0.00		
12.				\$0.00		
13.				\$0.00		
14.				\$0.00		
15.				\$0.00		
16.				\$0.00		
17.				\$0.00		
18.				\$0.00		
19.				\$0.00		
20.				\$0.00		
21. Sub-Total (lines 1 thru 20)		10,080.00		\$635,485.60	\$410,825.00	\$224,660.60
22. Overtime (cannot exceed 5% of OSMB's amount on line 21)					\$22,000.00	
23. Total Proposed Personnel Costs (lines 21 + 22)					\$432,825.00	\$224,660.60

Boating Safety Program

Proposed Operations & Maintenance Costs – Form B



County/Agency: Clackamas County Sheriff

Operating Supplies/Maintenance/Training Costs	Actual Expenditures		
	Total	OSMB	County/ Agency Cash Contrib.
A. Fuel: Vehicle 9,000.00 gallons @ \$ \$3.20 per gallon Boat 6,000.00 gallons @ \$ \$3.20 per gallon <div style="text-align: right; margin-top: 10px;">Subtotal of A:</div>	 	 	
B. Vehicle Lease			
C. Moorage	\$12,575.00	\$0.00	\$12,575.00
D. Expendable Supplies – (\$500 max/each item) specify: 1. Materials and Services 2. 3. 4. <div style="text-align: right; margin-top: 10px;">Subtotal of D:</div>	 	 	
E. Maintenance – Refer to your annual maintenance service plan, enter data: Identify by OR # and make: 1. Total Maintenance budget for all boats 2. 3. 4. 5. 6. <div style="text-align: right; margin-top: 10px;">Subtotal of E:</div>	 	 	
F. Insurance – (specify Insurance Company & policy #): Hartford Fire Insurance Policy #520MKA7840	 	 	
G. Non-OSMB Training – specify: 1. 2. 3. 4. <div style="text-align: right; margin-top: 10px;">Subtotal of G:</div>	 	 	

H. Training Attending— specify: 1. Drift: 2. Jet: 3. Academy: 4. Other: Total Training budget for Marine Board Training			
	\$6,340.00	\$0.00	\$6,340.00
Subtotal of H:	\$6,340.00	\$0.00	\$6,340.00
I. Other – specify: 1. County Allocation Charges 2. 3. 4. 5. 6. 7. 8. 9. 10.			
	\$34,060.00		\$34,060.00
Subtotal of I:	\$34,060.00	\$0.00	\$34,060.00
Subtotal:	\$170,287.00	\$0.00	\$170,287.00



DAN JOHNSON
DIRECTOR

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

September 16, 2021

Board of Commissioners
Clackamas County

Members of the Board:

Approval of the change in control of solid waste collection franchises (70-3-C, 70-4-C, 70-5-C, 70-19-C) held by Hoodview Disposal and Recycling, Inc., and (70-1-C) held by Canby Disposal Company, Inc.; and (70-15-C) held by West Linn Refuse & Recycling, Inc. to Kahut Companies Holdings, Inc.

Purpose/Outcomes	Approving the change in control of a solid waste collection franchise.
Fiscal Impact	N/A
Funding Source	N/A
Duration	Until terminated by the Board
Previous Action	Solid Waste Commission approval on August 18, 2021
Strategic Plan Alignment	Build public trust through good government and ensure safe, healthy and secure communities
Counsel Review	Reviewed and approved by Counsel 8-30-21 SC
Procurement Review	Was the item processed through Procurement? NO If no, provide brief explanation: Not required.
Contact Person	Rick Winterhalter, Sr. Sustainability Analyst DTD Sustainability & Solid Waste 503-742-4466

The Clackamas County Solid Waste and Waste Management Code (10.03.250) allows the holder of a solid waste or wastes Collection Service Franchise to change control of the franchise to other persons by providing written notification to the County of the proposed change and with approval from the Board. The Board may approve the transaction with a recommendation from the Solid Waste Commission.

The Kahut family owns and manages Hoodview Disposal and Recycling, Inc., Canby Disposal Company and West Linn Refuse & Recycling, Inc. These companies hold solid waste collection franchises in the County and in the cities of Canby, Milwaukie, Sandy, and West Linn.

The Kahut's relationship with the County began 47 years ago when brothers Fred and Jerald Kahut and a partner, George Findling, purchased Canby Disposal Service, incorporated as Canby Disposal Company and received approval from the Board to provide services in franchise 70-1-C.

Since that time, the Kahut family has purchased other companies and the Board has approved the associated franchise transfers, through sales and change in control. Hoodview Disposal and Recycling, Inc. (Hoodview) holds several franchises. The largest area is the B&J Garbage franchise 70-19-C. This transfer was approved by the Board in 2002. The other three franchises held by Hoodview were originally held by members of the Deines family (70-3, 4, & 5 –C). These franchises border the cities of Milwaukie and Portland. Annexations by the City of Milwaukie are eroding the already small number of customers in these franchises. The Board approved the franchise transfers in 2011 and 2017. For future disposition of these franchised areas they will be combined as the Hoodview franchised area and numbered (70-19,3,4,5-C).

West Linn Refuse & Recycling, Inc. (WLR&R) has a franchise to serve the City of West Linn granted by the City. The majority of the twenty-two (22) County customers served by this company, through the County's franchise, are all within the urban growth boundary of the City. There are seven tax lots in the County franchise outside the city boundary. The Board approved the transfer of all of the customers, from the previous franchisee, to WLR&R in 2002.

In mid-July staff was verbally notified that the three companies were seeking a change in control of the solid waste collection franchises held by Canby Disposal Company, Inc., Hoodview Disposal & Recycling, Inc.; and West Linn Refuse & Recycling, Inc. to another County franchisee. A letter was received on August 3, 2021 from the attorney representing the three (3) companies that the stock in the companies was to be sold to Kahut Companies Holdings, Inc., a wholly owned subsidiary of Waste Connections US, Inc. and further requested the County's approval of the franchise change in control. On the same day, the County received the application for the change in control. Staff reviewed and accepted the application as complete.

Waste Connections of Oregon, Inc., a wholly owned subsidiary of Waste Connections US, Inc. (WCI), currently holds two county solid waste collection franchises, the American and Mt. View franchises. These franchises serve approximately 2,500 customers in the rural area outside Estacada. The Board approved the transfer of the American franchise (70-25-C) in 2002 when WCI purchased American Sanitary Service, Inc. The Board approved the Mt. View (70-17-C) franchise transfer in 2003 when WCI dba Arrow Sanitary Service, Inc. purchased Mt. View Sanitary Service, Inc. Waste Connections of Oregon, Inc. is a County solid waste collection franchisee in good standing.

Waste Connections of Oregon, Inc. has proven they have the available land, equipment and personnel to carry out the requirements of a franchise holder in Clackamas County.

This change in control means all the equipment, land and personnel currently owned or managed by the current County franchisees will be available to WCI. The company intends to continue serving these franchises from the current locations.

WCI will also be acquiring KB Recycling, a processing facility for dry waste and curbside recyclables in Clackamas and the Canby Transfer Station in Canby. The County does not franchise, license or permit these facilities; therefore they are not subject to the recommended action.

The Solid Waste Commission discussed this issue and recommended approval on August 18, 2021. The report has been reviewed and approved by County Counsel.

RECOMMENDATION

Staff respectfully recommends the Board of County Commissioners approve the change in control of the following franchises: 70-1-C from Canby Disposal Company; 70-19,3,4,5-C from Hoodview Disposal and Recycling, Inc., and 70-15-C from West Linn Refuse & Recycling, Inc. to Kahut Companies Holdings, Inc.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Winterhalter". The signature is fluid and cursive, with a large initial "R" and "W".

Rick Winterhalter, Sustainability Analyst, Sr.

Attachments

1. Letter Requesting Change in Control
2. Application Change in Control/Board Signature Page
3. Franchise Map: Canby
4. Franchise Map: Hoodview
5. Franchise Map: West Linn



August 3, 2021

VIA E-MAIL: rickw@clackamas.us

Rick Winterhalter
Sustainability & Solid Waste Program
Clackamas County
150 Beaver Creek Rd
Oregon City, OR 997045

RE: Franchise Transfer

Dear Mr. Winterhalter:

I represent Canby Disposal Company, Hoodview Disposal & Recycling, Inc., and West Linn Refuse & Recycling, Inc (collectively, the "Companies"). This is to notify you that the Companies are being purchased by Kahut Companies Holdings, Inc., a wholly owned subsidiary of Waste Connections US, Inc. The Companies request that the County consent to this change in control of the Companies.

Thank you for your consideration. Please contact me if you have any questions concerning this request.

Very truly yours,


Frank Hammond

FH/jh

cc: Raymond Kahut
Michael Dell


503-837-3471

1050 SW 6th Ave., Suite 1100, Portland, OR 97204
frank@frankhammondllaw.com
frankhammondllaw.com



DAN JOHNSON
DIRECTOR

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

**APPLICATION FOR CLACKAMAS COUNTY’S CONSENT TO A
CHANGE IN CONTROL OF
SOLID WASTE COLLECTION FRANCHISES**

Any change in control of a solid waste franchise in Clackamas County requires completion of this application. All requested information must be provided and application must be signed by all parties in order for change in control to be considered by County

Date of Application July 30, 2021

1. INFORMATION ON DISTRICTS/ROUTES TO BE TRANSFERED

Provide the number of customers serviced by the current franchisees (Transferor) that will be served by the applicant (Transferee) if this change in control is approved by the County. For multifamily and commercial, use the number of service addresses where service is provided, not the number of paid accounts.

	Canby (70-1-C)	West Linn (70-15-C)	Hoodview (70-19,3,4,5-C)
Residential	1,281	22	4,879
Multifamily (5 units or more)	3	0	5
Commercial	119	0	277

2. INFORMATION ON TRANSFEREE

Business Legal Name **Kahut Companies Holdings, Inc.**

Business DBA Name _____

Mailing Address **c/o Waste Connections**

12115 NE 99th Street Suite 1830

Vancouver, Washington 98682

Attention: Division Vice President

Location of Office (if different) _____

Website Address http://kahutwasteservices.com/

Contact Person

Name & Title Jason Hudson, Division Vice President

Mailing Address (if different) _____

Office Phone 503-318-1572

Office e-mail Jasonh@wcnx.org

Person Responsible for Management _____

Of this Franchise (if different) _____

Type of Organization: Delaware corporation qualified to conduct business in the State of Oregon

Other Companies Controlled by Transferee (list for each):

Names of Company	<u>Canby Disposal Company</u>
Location	<u>Canby, OR</u>
Business Activity	<u>Refuse & Recycling Collection</u>
Name of Company	<u>Canby Transfer & Recycling, Inc.</u>
Location	<u>Canby, OR</u>
Business Activity	<u>Refuse & Recycling Transfer</u>
Name of Company	<u>Hoodview Disposal & Recycling, Inc.</u>
Location	<u>Clackamas, OR</u>
Business Activity	<u>Refuse & Recycling Collection</u>
Name of Company	<u>K.B. Recycling, Inc.</u>
Location	<u>Clackamas, OR</u>
Business Activity	<u>Recycling Processing</u>
Name of Company	<u>West Linn Refuse & Recycling, Inc.</u>
Location	<u>Canby, OR</u>
Business Activity	<u>Refuse & Recycling Collection</u>
Name of Company	<u>Kahut Investment Holdings, LLC</u>
Location	<u>Canby, OR</u>
Business Activity	<u>Real Estate</u>

If Transferee is a Subsidiary of Another Corporation:

Name of Parent Company Waste Connections US, Inc.

If Transferee is a Partnership:

Names of partners and percentage of partnership interest held by each

_____	_____
_____	_____
_____	_____
_____	_____

Continue on separate sheet of paper, if necessary.

3. AREAS CURRENTLY SERVED BY APPLICANT

List the jurisdictions in the Portland Metro Region and Clark County, Washington in which the Transferee or its principal officer(s) has provided solid waste, recycling and or composting service to customers during the past five years. Include length of time, in years, that service was provided and whether service was conducted under a franchise, permit, contract, or open market conditions. Note other business names used, if applicable.

Affiliates of the Transferee, Waste Connections of Washington, Inc. and Waste Connections of Oregon, Inc., dba Arrow Sanitary Service, dba American Sanitary Service, currently have franchise agreements with the City of Portland, City of Gresham, City of Estacada, Clackamas County, OR, and the City of Vancouver, City of Washougal, City of Camas and Clark County, Washington.

CONTRACTS LIST--Waste Connections Companies in Clark County Washington and Portland Metro Area

Dist Name	Customer Name	Serviced By	Start Date*	Related Customer Counts		
				Resi Counts	MF Counts	Comm Counts
Waste Connections of Washington	City of Washougal	Contract	03/23/09	5,276	19	208
Waste Connections of Washington	City of Camas - Recycling and Yard Debris	Contract	08/01/09	7,600	28	-
Waste Connections of Washington	Clark County G - Certificate 253	Certificate WUTC	10/26/97	74,034	NA*	4,352
Arrow Sanitary Service	Clackamas County	Franchise	01/01/02	2,352	159	167
Arrow Sanitary Service	City of Estacada	Franchise	01/01/02	455	-	26
Arrow Sanitary Service	City of Gresham	Franchise	7/1/98*	5,175	139	132
Arrow Sanitary Service	City of Portland	Franchise	7/1/98*	20,877	-	-
Arrow Sanitary Service	City of Portland - Commercial	Open Market	7/1/98*	85	624	1,957

*MF in Clark County are included in Commercial Count.

List the number of customers currently being serviced by the Transferee in each jurisdiction. For multifamily and commercial, use the number of service addresses where service is provided, not the number of paid accounts.

Jurisdiction See above Table

Date Transferee Began Operations See above Table

Residential See above Table

Multifamily (5 units or more) See above Table

Commercial See above Table

Continue on separate sheet of paper, if necessary.

4. DESCRIPTION OF SERVICES PROVIDED

Provide the number of customers currently served by the Transferee in the County. For multifamily and commercial, use the number of service addresses where service is provided, not the number of paid accounts.

	American (70-25-C)	Mt. View (70-17-C)
Residential	1,509	843
Multifamily (5 units or more)	159	0
Commercial	87	80

Are any of these customers served by a subcontractor? **No** If yes, list name(s) of subcontractor(s) and type(s) of service provided and number of customers served.

If the request for a franchise change in control is approved by the County and the Transferee intends to use a subcontractor to provide services within the County, they will be required to submit a separate application requesting approval from the Manager for each subcontractor.

5. VEHICLES

Complete the attached Fleet Sheet listing all vehicles that will be used for residential, multifamily or commercial collection within the County. Indicate which are currently owned, which would be acquired with the change in control, and which would be purchased new.

See attached Fleet Sheet for Kahut Companies Holdings, Inc.

6. EMPLOYEES & SERVICE

How many employees, calculated as full-time equivalents, will the Transferee have for each of the following functions? Indicate those that are currently employees of the Transferee, which would be acquired as part of the transfer and which would be hired new.

		<u>Overall operations</u>		<u>County only operations</u>	
Management:	Current	<u>6</u>	FTE	<u>1</u>	FTE
	Acquire	<u>4</u>	FTE	<u>.7</u>	FTE
	New	<u>2</u>	FTE	<u>.35</u>	FTE
Administrative	Current	<u>5</u>	FTE	<u>.9</u>	FTE
	Acquire	<u>3</u>	FTE	<u>.5</u>	FTE
	New	<u>2</u>	FTE	<u>.35</u>	FTE
Collection	Current	<u>46</u>	FTE	<u>8</u>	FTE
	Acquire	<u>46</u>	FTE	<u>8</u>	FTE
	New	<u>0</u>	FTE	<u>0</u>	FTE
Customer Service	Current	<u>10</u>	FTE	<u>1.7</u>	FTE
	Acquire	<u>10</u>	FTE	<u>1.7</u>	FTE
	NEW	<u>0</u>	FTE	<u>0</u>	FTE
Maintenance	Current	<u>10</u>	FTE	<u>1.7</u>	FTE
	Acquired	<u>10</u>	FTE	<u>1.7</u>	FTE
	NEW	<u>0</u>	FTE	<u>0</u>	FTE

Headcount for County operations is based on a customer county allocation.

Please list times and days of week your office will be open and conducting administrative business such as customer service, payment acceptance, and billing. Monday – Friday, 8:00 a.m. to 5:00 p.m.

7. DETAIL COST REPORT

If the transferee is not currently a franchisee in the County, but is a permitted or licensed hauler elsewhere in the Metro Region, attach the most recent Detail Cost Report submitted in the jurisdiction in which you serve the most customers.

See most recent Detail Cost Report submitted by Arrow Sanitary Service.

8. INSURANCE

List the carrier names, carrier phone numbers and account numbers for the insurance coverage that the transferee will use to provide coverage for its County operations.

Coverage Type	Carrier Name	Local Agent	Name/Phone #	Policy #
General Liability	ACE American Insurance Company	Edgewood Partners Insurance Center	Belinda Lopes Mobile (623) 826-0161	HDOG72492547
Auto Liability	ACE American Insurance Company	Edgewood Partners Insurance Center	Belinda Lopes Mobile (623) 826-0161	ISA H25544717
Workers Compensation	Indemnity Insurance Company of N A	Edgewood Partners Insurance Center	Belinda Lopes Mobile (623) 826-0161	WLR C67816389 (AOS) WLR C67816420 (CA, MA)
Umbrella	ACE Property & Casualty Insurance Company	Edgewood Partners Insurance Center	Belinda Lopes Mobile (623) 826-0161	XEUG27614620 007

9. ADDITIONAL INFORMATION FOR NON-FRANCHISEES / PERMITTEES

If the transferee is not currently a franchisee in the County, attach the following documents:

- U.S. Department of Transportation verification of compliance
- Certificate of Insurance indicating public liability and property damage coverage with a combined single limit of not less than \$1,000,000 per occurrence
- Certificate (form CG-20-12) naming the County , their officers and employees as additional insured

NOTICE: THE ABOVE INFORMATION IS NOT EXEMPT FROM DISCLOSURE UNDER STATE PUBLIC RECORDS LAW.

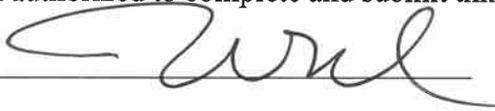
10. ATTEST TO COMPLY AND VERIFY ACCURACY OF APPLICATION

I, the Transferee, certify that I have read, understand and shall abide by the following regulatory requirements:

- Clackamas County Code Chapter 10.03.
- Clackamas County Solid Waste and Recycling Collection Services Administrative Regulations for Franchisee & Customer

I certify that all employees have access to, are familiar with and shall abide by these regulations.

I, the undersigned, verify that all information submitted on this form is truthful and accurate, and that I am authorized to complete and submit this application.

Signed:  Date: 8/3/2021

Print name: Jason W. Hudson Title: Division Vice President

Address: 12115 NE 99th Street, Suite 1830 Phone: 503-318-1572
Vancouver, WA 98682

RELEASE OF ADDITIONAL INFORMATION

I authorize the County and/or its representatives to request any information they find necessary to verify the transferee's technical, financial and legal qualifications to operate this franchise. Those who are asked for information related to this inquiry may accept a copy of this document as their authorization to release such information.

Kahut Companies Holdings, Inc.

Company Name


Signature

Division Vice President

Title

8/3/2021
Date

Jason W. Hudson

Name (please print)

TRANSFEEE

1. I SHALL notify the County of any intent to change principal ownership or name of the business entity holding the franchise(s).
 YES NO
2. I SHALL submit a written request to receive the forms for Change in Control, Name Change, or Transfer of the Franchise Holder prior to either action occurring.
 YES NO
3. I SHALL notify the County of any intent to transfer the franchise(s) to another person or entity.
 YES NO
4. I SHALL be bound by the County's decision to accept or deny a Change in Control, Name Change, or Transfer of the franchise(s).
 YES NO
5. I recognize the County's authority to revoke the privileges of holding the franchise(s) associated with this Change in Control, Name Change, or Transfer without compensation.
 YES NO
6. I recognize the County's authority to realign the borders of the area served by this franchise.
 YES NO
7. I HAVE not willfully misrepresented the material facts or information given in this application for a franchise.
 YES NO
8. I SHALL not willfully misrepresent material facts or information given in a future application for a franchise.
 YES NO
9. I SHALL comply with all policies established by the County during the Franchise period.
 YES NO
10. I SHALL use only authorized disposal sites.
 YES NO
11. I SHALL notify the County of all disposal sites used at the time of this application and when those sites change.
 YES NO
12. I SHALL furnish the County with a Certificate of Insurance and comply with Section 10.03.160 B 4, 5 and 6 of the Clackamas County Solid Waste and Waste Management Code and any subsequent amendments of regulations adopted thereto.
 YES NO
13. I SHALL make accurate and timely franchise fee payments due the County under the Clackamas County Code and any subsequent amendments of regulations adopted thereto.
 YES NO

14. I SHALL submit, on forms provided by the County, the production records of the transferor beginning January 1 of the year of the transfer to the closest month end prior to the submittal of the request for transfer.
 YES NO
15. I SHALL separately submit, on forms provided by the County, the financial and production records of the transferor beginning January 1 of the year of the transfer to the date of the transfer as determined by the Board of County Commissioners. If the transfer takes place in the first quarter the submittal date shall be June 10; if in the second quarter the submittal date shall be September 10, if in the third quarter the , submittal date shall be September 10; in in the fourth quarter the submittal shall be the same as required for the annual financial review.
 YES NO
16. I SHALL separately submit, on forms provided by the County, the financial and production records produced by me after assuming operational responsibility of the franchise at the time of required submittal for the annual financial review.
 YES NO
17. I SHALL combine, on forms provided by the County, the financial and production records produced by the transferor prior to my assuming operational responsibility of this franchise, with the production records produced by me after assuming operational responsibility, in order to meet the County's requirement for generation of the annual financial review report.
 YES NO
18. I SHALL maintain collection vehicles, equipment, facilities and personnel commensurate with existing service.
 YES NO
19. I SHALL continue to serve customers at the level of service they are accustomed to at the time of the transfer.
 YES NO
20. I SHALL notify the County of any intention to change the level of service provided to customers at the time of the transfer.
 YES NO
21. I SHALL notify the County of any impending changes to collection vehicles, equipment, facilities and personnel (management and other County contacts) during the franchise period.
 YES NO
22. I SHALL secure written approval of the County prior to making changes to collection vehicles, and equipment affecting a change in service delivery from that of the transferor.
 YES NO
23. I SHALL not willfully refuse to provide adequate service in a defined service area.
 YES NO

24. I SHALL not willfully misrepresent the total number of customers or any other information relating to performing the operations necessary to comply with the Clackamas County Code and any subsequent amendments of regulations adopted thereto.
 YES NO

25. I SHALL not willfully violate the Clackamas County Code, Administrative Rules, ORS Chapter 459 and 459A, or the rules or regulations promulgated there under and any subsequent amendments of regulations adopted thereto.
 YES NO

26. I SHALL provide the best possible integrated solid waste collection service in the area served by my Clackamas County Franchise.
 YES NO

TRANSFeree (BUYER)

I/we agree to the above commitments and will attend any Board of County Commission or Solid Waste Commission meeting on this matter to answer any questions regarding the change in control of the franchise by any Board, Commission or staff member.

(signature) 

(signature)

Jason W. Hudson

(print name)

(print name)

Division Vice President

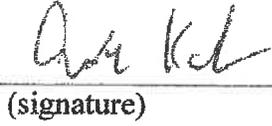
Title

Title

DATE: 8/3/21

TRANSFEROR (SELLER)

I/we agree to the change in control of the franchise to Transferee :

(signature) 

(signature)

Andrew Kahit

(print name)

(print name)

President

Title

Title

DATE: 8-3-21

Clackamas County Board of Commissioners
Approval of Change in Control of Solid Waste Collection
Franchises

This application comes before the Board on _____.
After having reviewed all materials and considering the
recommendations of staff, the Solid Waste Commission, and
anyone else submitting comments or information, the Board
hereby approves the application for change in control of these
franchises.”

CLACKAMAS COUNTY BOARD OF COMMISSIONERS

Chair

Recording Secretary

Attachment 3

OREGON CITY
GARBAGE CO.

REPUBLIC
SERVICES

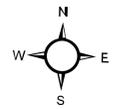
CANBY
DISPOSAL

MOLALLA
SANITARY

Canby-(70-1-C)

Hauler Boundaries

- Canby Disposal
- Molalla Sanitary
- Oregon City Garbage Co.
- Republic Services



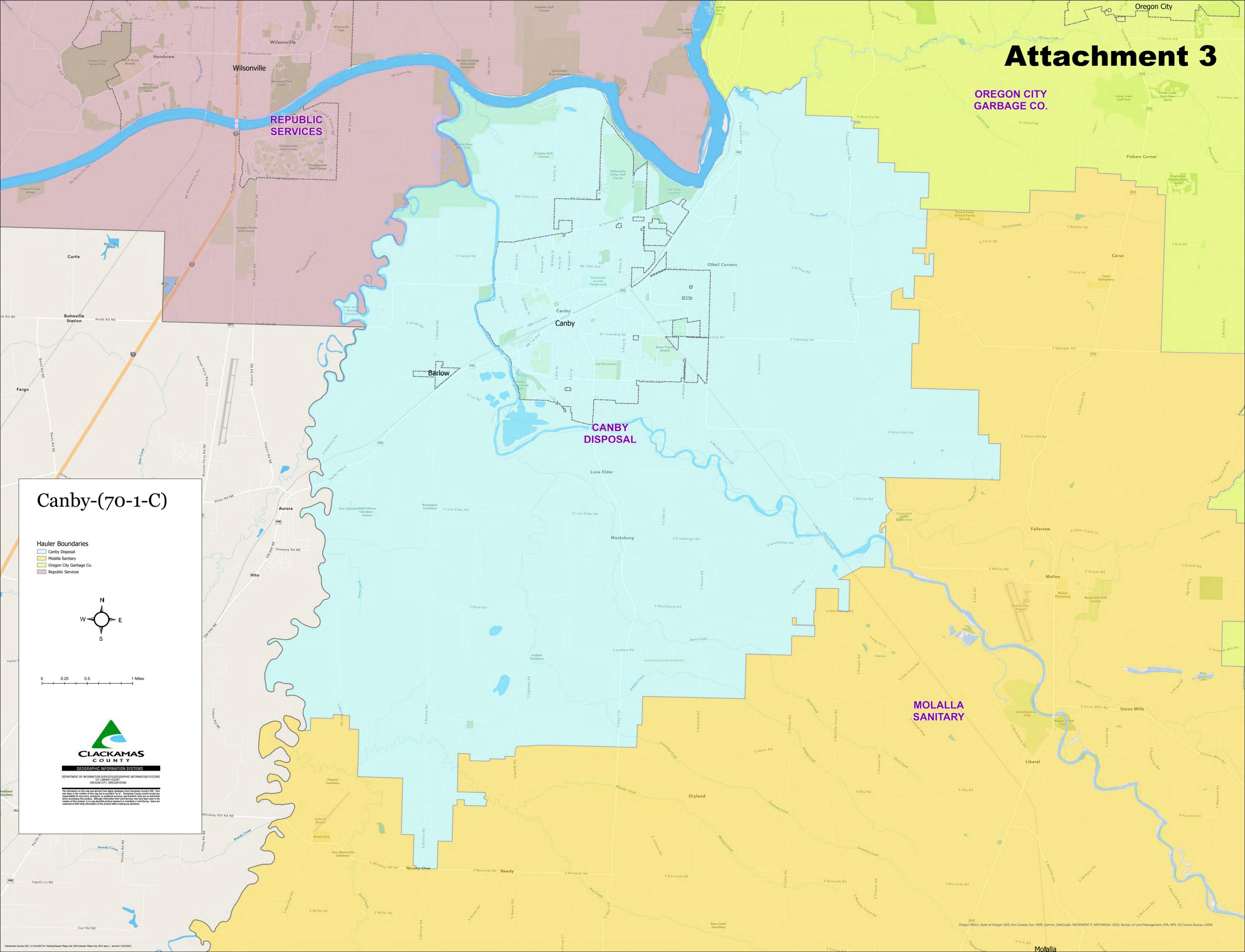
0 0.25 0.5 1 Miles



CLACKAMAS COUNTY
GEOGRAPHIC INFORMATION SYSTEMS

DEPARTMENT OF INFORMATION SERVICES/GEOGRAPHIC INFORMATION SYSTEMS
1211 LIBRARY COURT
OREGON CITY, OREGON 97143

The information on this map was derived from digital datasets from Clackamas County GIS. Data was taken in the creation of this map but is provided "as is". Clackamas County cannot accept any responsibility for any errors, omissions, or outdated accuracy and/or availability. There are no warranties made concerning this product. Although information that Clackamas County has made available in the creation of this product, it is not Clackamas County's responsibility to update it. Users are advised to seek out the most current information on the ground before making any decisions.



Waste Management of Oregon

Arrow Sanitary

Hoodview Disposal & Recycling, Inc.

Waste Management of Oregon

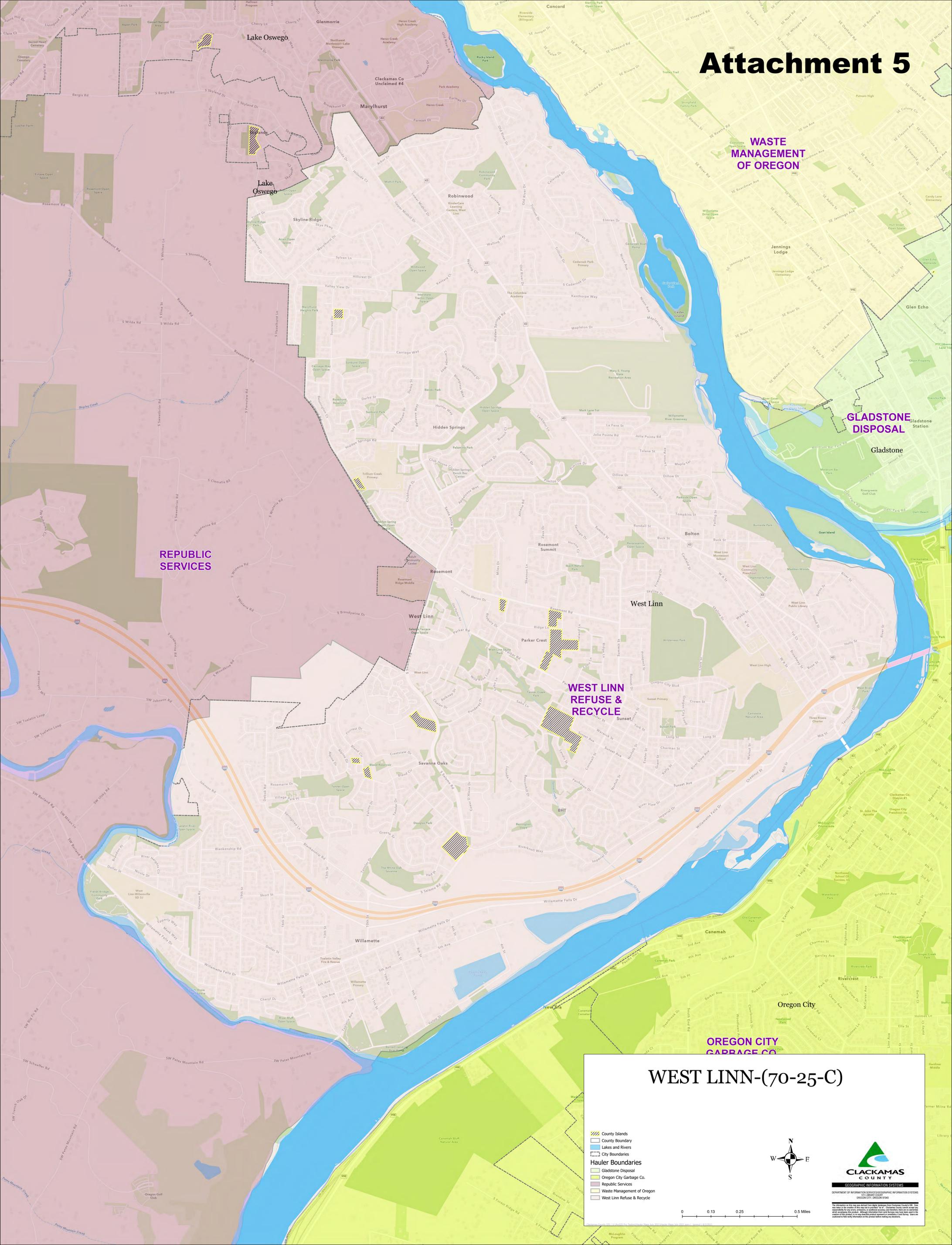
Hoodview-(70-19,3,4,5-C) Map 2

- County Boundary
- Hood View Disposal
- City of Milwaukie and Hoodview Disposal Intersect
- Lakes and Rivers
- City Boundaries
- Hauler Boundaries



The information on this map was derived from digital data provided by Clackamas County GIS. Clackamas County is not responsible for errors or omissions. Clackamas County is not liable for any damages arising from the use of this information. All rights reserved. Clackamas County, Oregon 97005.

Attachment 5



REPUBLIC SERVICES

WEST LINN REFUSE & RECYCLE

WASTE MANAGEMENT OF OREGON

GLADSTONE DISPOSAL

OREGON CITY GARBAGE CO.

WEST LINN-(70-25-C)

Legend

- County Islands
- County Boundary
- Lakes and Rivers
- City Boundaries
- Hauler Boundaries
 - Gladstone Disposal
 - Oregon City Garbage Co.
 - Republic Services
 - Waste Management of Oregon
 - West Linn Refuse & Recycle

Scale: 0 0.13 0.25 0.5 Miles

North Arrow

CLACKAMAS COUNTY
GEOGRAPHIC INFORMATION SYSTEMS
DEPARTMENT OF INFORMATION SERVICES/GEOGRAPHIC INFORMATION SYSTEMS
OREGON CITY, OREGON 97143



DAN JOHNSON
DIRECTOR

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

September 16, 2021

Board of Commissioners
Clackamas County

Members of the Board:

Approval of the subcontract to collect infectious waste in the franchises held by
Waste Management of Oregon, Inc.

Purpose/Outcomes	Approving a new subcontract for infectious waste collection by a franchisee.
Fiscal Impact	N/A
Funding Source	N/A
Duration	Until terminated by the Board
Previous Action	Solid Waste Commission approval on August 18, 2021
Strategic Plan Alignment	Build public trust through good government and ensure safe, healthy and secure communities
Counsel Review	Reviewed and approved by Counsel 8-30-21 SC
Procurement Review	Was this item processed through procurement? No If not, provide brief explanation: Not required – this contract is held by the franchised collector but must be approved by the Board.
Contact Person	Rick Winterhalter, Sr. Sustainability Analyst DTD Sustainability & Solid Waste 503-742-4466
Contract No.	N/A

ORS 459A.085 provides that, in order to ensure reliable and affordable collection of solid waste, counties may adopt “a system of regulated [integrated solid waste] collection service by issuing franchises which may be exclusive if service areas are allocated.” The 1989 Legislature added ORS 459.386-400, requiring local governments to regulate the collection and disposal of infectious wastes including medical waste and “sharps.” County Code 10.03.260 A.3. allows a solid waste collection franchise holder to *...subcontract with another person to provide service, or a particular type of service, within a Service Area...*

In 2011 Waste Management of Oregon, Inc. (WM) notified the County of the termination of their Board approved subcontract with BioMed of Oregon, and on or about October 1, 2011, WM assumed the infectious solid waste collection responsibilities within their franchise areas. Because WM was providing collection service within their Board approved franchise areas, no further Board action was required.

In May, WM verbally notified the County they intended to enter into a subcontract with Trilogy Medwaste West, LLC (Trilogy) in the future. On July 6, 2021 staff was notified by Ron Adams, National Sales Director of Trilogy (<https://www.trilogymedwaste.com/>) based in Houston, Texas that Trilogy was seeking Board approval allowing Trilogy to act as subcontractor providing infectious waste collection (regulated medical waste) within WM's franchised areas within Clackamas County.

Waste Management of Oregon, Inc. is a franchisee in good standing. Since 2011 when they began providing infectious waste collection in their service area, the County has not had cause to initiate any disciplinary action against the company. Infectious waste collection providers must be familiar with and understand how to meet compliance regulations for waste that fall on health care providers. Brief research by staff reveals Trilogy provides infectious waste collection services nationwide.

Trilogy has hired staff with direct experience in infectious waste collection in our community (WM's former district manager for infectious waste collections, Jeff Norton, who served in that capacity since 2011). County staff has found Mr. Norton to be responsive and cooperative throughout his tenure working with the County. Mr. Adams also worked with the County when he was with Stericycle, Inc. the infectious waste subcontractor for several other franchisees.

Staff is confident WM and Trilogy will continue to ensure customers requiring infectious waste collection in WM's franchised areas receive safe and efficient service.

The Solid Waste Commission discussed this issue and recommended approval on August 18, 2021. The report has been reviewed and approved by County Counsel.

RECOMMENDATION

In alignment with the Solid Waste Commission recommendation, staff respectfully recommends the Board of County Commissioners approve the subcontract for infectious waste collection in the franchises held by Waste Management of Oregon, Inc.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Winterhalter". The signature is fluid and cursive, with a large initial "R" and "W".

Rick Winterhalter, Sustainability Analyst, Sr.

Attachment
Subcontract/Signature page

**SUBCONTRACT AGREEMENT FOR
REGULATED MEDICAL WASTE SERVICE
FOR WASTE MANAGEMENT IN CLACKAMAS COUNTY, OREGON**

This Subcontract Agreement for Regulated Medical Waste Services (“Agreement”) is made and entered into by and between Waste Management of Oregon, Inc. (“Contractor”) and Trilogy Medwaste West, LLC (“TRILOGY”). The parties shall be collectively referred to herein as the “Parties” and individually as a “Party”, unless specifically identified otherwise. This Agreement shall be effective upon the Effective Date as defined below in **Section 4**.

RECITALS

WHEREAS Contractor is a Collection Service Franchisee as defined in Clackamas County Code 10.03.030 to provide collection service for solid waste, within the Franchised Area (as defined below), including without limitation, Regulated Medical Waste (as defined below)

WHEREAS the Contractor may subcontract with another party to provide Regulated Medical Waste collection services after obtaining approval from the Board of County Commissioners for Clackamas County in accordance with Clackamas County Code 10.03.260A.3;

WHEREAS TRILOGY is in the business of providing Regulated Medical Waste services, including Regulated Medical Waste collection, storage, transportation and disposal, and has the necessary expertise, equipment, and resources to provide such services in the State of Oregon; and

WHEREAS the Parties hereto desire to enter into a subcontract whereby Trilogy will have the exclusive right and duty to collect Regulated Medical Waste within the Solid Waste Franchise Area, upon the terms set forth below and in compliance with the terms of the Solid Waste Franchise.

TERMS AND CONDITIONS

NOW, THEREFORE, Contractor and TRILOGY, for the consideration hereinafter named, agree as follows:

1. Definitions.

1.1. “Regulated Medical Waste” or “RMW” means “Infectious Waste” as defined in ORS 459.386, OAR 333-056-0020 and Clackamas County Code 10.03.030.32 , including any amendments thereto, but specifically excluding “Excluded Waste”, unless the Parties subsequently agree in writing to include any materials that would otherwise be Excluded Waste within the definition of Regulated Medical Waste for purposes of this Agreement. Except as otherwise excluded from the definition of Infectious Waste under Oregon law, examples of “Regulated Medical Waste” included in this Agreement include, without limitation: sharps, gauze and bandages that have been in contact with bodily fluids, containers, tubing, blood, blood products, trace chemotherapy waste, tissue, specimens generated in the course of diagnosis and medical treatment and anatomical parts that emanate from surgeries, autopsies and obstetrical and laboratory procedures.

1.2. “Excluded Waste” means: (a) any waste or other material not falling within the definition of Medical Waste, including complete human remains; (b) radioactive waste; (c) any hazardous waste, as defined or regulated under applicable Law; (d) containers that are

damaged, leaking or could cause harm or exposure to employees, the general public or others; (e) waste that has been incorrectly identified, labeled and/or segregated; (f) any waste or device containing mercury including amalgam, vacuum pumps and other medical devices; (g) pharmaceutical waste (except what is accepted by TRILOGY under its pharmaceutical disposal program, if any); (8) boxes that exceed approved TRILOGY and DOT standards; or (h) any other waste that cannot be collected, transported or treated by TRILOGY in accordance with any and all applicable Laws.

1.3. "Franchised Area" means (a) the entire territory included within the Contractor's current service area under the Clackamas County Solid Waste Franchise Authority, and (b) such additional area as may thereafter become included with the Contractor's service area from time to time due to annexation, incorporation, or other means but only from and after the time as TRILOGY is able to provide collection services in such additional area.

1.4. "Gross Receipts" means all gross receipts (including cash and cash equivalents) for the period from all Franchised Area RMW revenue sources, before any adjustments.

1.5. "Law" means any law, rule, regulation, ordinance, requirement, guideline, action, order, permit, license, approval, authorization, consent or entitlement enacted or issued by a governmental authority.

2. Medical Waste Services to be Performed. TRILOGY shall provide collection, management, transportation, disposal, and treatment services for all Regulated Medical Waste within the Franchised Area (the "Services"), including but not limited to Regulated Medical Waste from hospitals, medical clinics, dental offices, outpatient and inpatient care facilities, nursing homes, and veterinary clinics (collectively, the "RMW Accounts"). **Exhibit A** attached hereto lists all current RMW Accounts known to Contractor within the Franchise Area. If Contractor becomes aware of any other RMW Accounts not listed on Exhibit A or receives any requests for new RMW Accounts in the Franchised Area, Contractor shall promptly notify TRILOGY and TRILOGY shall make arrangements with the customer to provide Services.

3. Rejection of Excluded Waste. Title to and liability for Excluded Waste shall remain with customer at all times. TRILOGY shall have the right to inspect, analyze or test any waste collected from customer. If customer's waste is Excluded Waste, TRILOGY can, at its option, reject the Excluded Waste and return it to customer or require customer to remove and dispose of the Excluded Waste at Customer's expense.

4. Effective Date; Term. This Agreement shall commence as of and from the date both Parties have executed and dated this Agreement (the "Effective Date") and shall continue for a term that shall run concurrently with the term of Contractor's Franchise, unless this Agreement is terminated prior to the expiration or termination of the Franchise, pursuant to **Section 5** below (the "Term").

5. Termination. This Agreement shall automatically and immediately terminate without any further action by either Party in the event that the Franchise expires or is terminated for any reason. In addition, either Party shall have the right to terminate this Agreement by giving the other Party at least One Hundred Twenty (120) days' advance written notice.

6. TRILOGY Representations, Warranties and Covenants. TRILOGY hereby represents, warrants and covenants that it will:

(a) provide the Services and manage the RMW in a safe, professional and workmanlike manner in accordance with industry standards and in full compliance with all applicable Laws;

(b) obtain documents, shipping papers, or manifests from RMW Accounts as required for the lawful transfer of the special or hazardous waste under all applicable Laws (including, without limitation, 49 CFR § 172.302);

(c) use treatment, storage and disposal (“TSD”) facilities approved by the Contractor for the Regulated Medical Waste that have been issued all permits, licenses, Franchised Area or approvals required by applicable Laws necessary to allow the TSD facility to accept, treat and/or dispose of the RMW;

(d) provide all supervision, labor, materials, tools, vehicles and other items for the performance of the Services; and

(e) obtain and maintain all necessary permits and licenses under applicable Law required for performance of the Services.

7. Customer Service; Compensation for Services. TRILOGY shall be solely responsible for all customer service to the RMW Accounts, including without limitation, customer complaints, set up of new accounts, service questions, billing charges and collecting payment from RMW Accounts for the Services. Such charges shall be in compliance with the Franchise and with current approved rates established by Clackamas County. A copy of such rates as of the Effective Date is attached hereto as **Exhibit B**, and any amendments to those rates after the Effective Date shall be added to **Exhibit B**.

8. Subcontract Fee. As consideration for the right to provide the Services hereunder, on or before the fifteenth (15th) day of the first month of each quarter, TRILOGY shall pay Contractor a subcontract fee equal to Five Percent (5%) of the Gross Receipts collected by TRILOGY from RMW Accounts during the previous quarter (“Subcontract Fee”). TRILOGY shall submit an accounting with each Subcontract Fee paid to Contractor, and remit such Subcontract Fee in full. TRILOGY shall promptly provide all backup documentation for such Subcontract Fee upon reasonable request of Contractor. Any disputes between Contractor and TRILOGY regarding the calculation of the Subcontract Fee shall be negotiated in good faith between the Parties.

9. Franchise Fees. In addition to the Subcontract Fee in **Section 8** above, TRILOGY shall pay to Contractor an amount equal to the Franchise fee required by Clackamas County under Contractor's franchise that is attributable to the RMW Services performed by TRILOGY hereunder. TRILOGY will deliver to Contractor on or before the Fifteenth (15th) day of each Quarter a report showing the RMW collection services actually performed and the calculation of the franchise fee attributable thereto for the preceding quarter along with TRILOGY's payment of such Franchise fee. TRILOGY shall promptly provide all backup documentation for such Subcontract Fee upon reasonable request of Contractor. Contractor shall be solely responsible to remit all Franchise fees and/or any taxes payable to Clackamas County for solid waste collection services provided under the Franchise, including any that are or may be applicable to the Services provided by TRILOGY under this Agreement. Any disputes between Contractor and TRILOGY regarding the calculation of the Franchise fee payable by TRILOGY shall be negotiated in good faith between the Parties. Contractor shall indemnify and hold TRILOGY harmless from any and all claims against

TRILOGY resulting from the failure of Contractor to remit to Clackamas County all or any portion of the Franchise fee actually paid to Contractor by TRILOGY.

10. Insurance. TRILOGY shall maintain throughout the term of this Agreement the following types of insurance coverage with limits that are required by appropriate regulatory agencies or the following, whichever are greater:

Coverage	Limits
Commercial General Liability (bodily injury & property damage)	\$2,000,000 per occurrence \$3,000,000 annual aggregate
Automobile Liability	\$2,000,000 combined single limit per occurrence
Employer's Liability	\$1,000,000 per occurrence
Workers' Compensation	Statutory Limit
Pollution Liability	\$6 million annual aggregate

TRILOGY shall name Contractor and Clackamas County as primary additional insured parties under the liability insurance policies. Upon request, TRILOGY shall provide to Contractor and/or Clackamas County a certificate evidencing such insurance. Such coverage and policies shall not be canceled or revoked without providing Contractor thirty (30) days advance written notice.

11. Indemnification. TRILOGY agrees to indemnify, defend and hold harmless Contractor, its shareholders, officers, directors, employees, contractors and agents (collectively, the "Indemnitees") from and against any and all damages, costs or liability (including reasonable attorneys' fees) which the Indemnitees may be responsible for or pay out as a result of bodily injuries (including death), property damage, or any violation or alleged violation of Law, to the extent related to or arising out of TRILOGY 's performance of the Services, caused by TRILOGY's breach of this Agreement or by any negligent act, negligent omission or willful misconduct of TRILOGY or its employees, including, without limitation, damages, costs or liability related to or arising out of (1) the collection or transportation of the RMW by TRILOGY or (2) the disposal of the RMW, after the date of this Agreement, in a facility owned by a subsidiary or affiliate of Contractor. Such indemnity shall exclude damages to the extent they arise as a result of the negligence or willful or reckless misconduct of Contractor or Clackamas County. This Section 11 shall survive the expiration or earlier termination of this Agreement.

12. Reporting; Record Keeping; and Inspection. TRILOGY shall at all times under this Agreement, maintain records of (a) the amount (by volume) of RMW received, processed, and disposed of under this Agreement, (b) names, addresses and service specifications of RMW Accounts, and (c) revenue billed to and collected from RMW Accounts, and shall submit a summary of all such information to Contractor on or before the fifteenth (15th) day of each quarter for RMW Services provided during the previous quarter. TRILOGY shall submit to the Contractor an annual detailed cost report and any other reports requested by the County according to the schedule set by the County. TRILOGY shall provide other non-proprietary data which may be requested by Contractor regarding the RMW handled by TRILOGY under this Agreement and which is reasonably necessary to assist Contractor in complying with its reporting requirements under the Franchise. Contractor shall have access to and the right to examine TRILOGY's books and records reasonably relevant to the RMW services performed by TRILOGY under this Agreement.

13. Communications with Clackamas County; Cooperation. Except as otherwise agreed to by the Parties, the Contractor shall be responsible for all communications with Clackamas County regarding the Services under this Agreement. Contractor shall cooperate with and assist

TRILOGY in submitting to Clackamas County and seeking approval of all reasonable, substantiated requests for increases in the approved rates for the Services provided by TRILOGY hereunder (but in no event shall Contractor be obligated to submit increases to Clackamas County more frequently than one (1) time per calendar year) and for all reasonable requests to modify the nature and scope of Services provided hereunder.

14. Relationship of the Parties. TRILOGY and its employees, agents, representatives or subcontractors are not and shall not be considered the agents, employees or servants of Contractor under this Agreement or otherwise. TRILOGY shall perform the Services as an independent contractor and employ agents and/or employees under the exclusive management and control of TRILOGY, and shall at all times have the exclusive control over the performance of the Services. Nothing in this Agreement shall be construed to give WM any right or duty to supervise or control TRILOGY, its officers, employees, agents, contractors, or subcontractors, nor to determine the manner in which TRILOGY shall perform its obligations under the Agreement. TRILOGY shall have full and exclusive liability for the payment of any and all taxes and contributions for unemployment insurance, retirement benefits, life insurance, pensions, annuities and similar benefits, which may now or hereafter be imposed by law or collective bargaining agreements with respect to persons employed or contracted with by TRILOGY for performance of Services under this Agreement.

15. Uncontrollable Circumstances. TRILOGY shall not be in default of this Agreement for its failure to perform or delay in performance caused by circumstances reasonably beyond its control, whether or not foreseeable, including, without limitation, fires, typhoons, hurricanes, severe weather, floods, volcanic eruptions, pandemics, quarantines, war, civil disturbances, acts of terrorism, labor disputes, acts of God or any future laws, rules, regulations, orders, or acts of any local, state, federal, or provincial government related to and materially and adversely affecting the Services or Trilogy's ability to perform them in a timely manner ("Force Majeure"). If TRILOGY claims Force Majeure, it shall promptly notify the Contractor when it learns of the existence of a Force Majeure condition and when the Force Majeure condition has terminated.

16. Notice of Default and Right to Cure. The failure of either Party to perform a material obligation under this Agreement shall be considered a breach of this Agreement, and the breaching Party shall be in default. If either Party is in default of this Agreement and has failed to cure such breach within thirty (30) days after receipt of written notice of such breach from any other Party, the non-breaching Party may, at its option, immediately terminate this Agreement at the end of the 30-day cure period. In the event of a default, the defaulting Party agrees to pay all damages suffered by the other party caused by said default, except under no circumstances shall the Parties be liable for consequential, indirect, punitive or special damages for any alleged default under this Agreement.

17. Notice. Any notice required or permitted hereunder shall be in writing and sent via personal delivery, certified or registered mail (return receipt requested) or by facsimile transmission) and sent to the address shown below:

If to Trilogy: Trilogy Medwaste, LLC
8554 Katy Freeway Suite 200
Houston, TX 77024
Attention: Ron Adams
Fax: _____
e-Mail: Radams@trilogymedwaste.com

If to Contractor: Waste Management of Oregon
7227 NE 55th
Portland, OR 97218
Attention: Adam Winston
Fax: _____
e-Mail: awinston@wm.com

18. Successors and Assigns. Neither Party shall assign this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld, except that Contractor may assign this Agreement to any Contractor affiliate without TRILOGY's consent. If Clackamas County is required to consent to the assignment of this Agreement, the Parties shall work cooperatively obtain such consents. If this Agreement is assigned as provided above, it shall be binding on and shall inure to the benefit of the Parties hereto and their respective successors and assigns.

19. Entire Agreement; Amendment. This Agreement constitutes the entire agreement among the Parties concerning the subject matter hereof and supersedes all previous correspondence, communications, agreements and understandings, whether oral or written among the Parties. This Agreement may not be modified, in whole or in part, except upon unanimous approval of the Parties and by a writing signed by all the Parties.

20. Survival of Claims. Termination of this Agreement shall not relieve either Party of any claims against it that arise under this Agreement before the Agreement is terminated.

21. Legal Fees. In the event any legal action is taken by either Party against the other Party to enforce any of the terms and conditions of this Agreement, it is agreed that the unsuccessful Party to such action shall pay to the prevailing Party therein all court costs, reasonable attorneys' fees and expenses incurred by the prevailing Party.

22. Governing Law. This Agreement, and all amendments or supplements thereto, shall be governed by and construed in accordance with the laws of the State of Oregon.

23. No Third Party Beneficiaries. This Agreement is made solely and specifically among and for the benefit of the Parties hereto, and their respective successors and assigns, and no other person will have any rights, interest, or claim hereunder or be entitled to any benefits under or on account of this Agreement, whether as a third party beneficiary or otherwise.

24. Headings. The Headings used in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Agreement nor the intent of any provision thereof.

25. Construction. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, that invalidity, illegality, or unenforceability shall not affect any other provision in this Agreement and this Agreement shall be construed as if the invalid illegal, or unenforceable provision had never been contained in it.

26. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A signature by any Party received via .pdf file or facsimile shall be treated as an original.

* * *

IN WITNESS WHEREOF, the Parties enter into this Agreement. Each person signing this Agreement represents and warrants that he or she has been duly authorized to enter into this Agreement by the Party on whose behalf it is indicated that the person is signing.

**WASTE MANAGEMENT OF
OREGON, INC.**

TRILOGY MEDWASTE WEST, LLC

By: Jason Rose
Name: Jason Rose
Title: Area Vice President
Date: 6/28/21

By: Bill Avery
Name: Bill Avery
Title: Corporate VP of Sales
Date: 6-25-2021

Clackamas County Board of Commissioners
Approval of a Subcontract to Provide
Infectious Waste Collection

This subcontract comes before the Board on _____.
“After having reviewed all materials and considering the
recommendations of staff, the Solid Waste Commission, and
anyone else submitting comments or information, the Board
hereby approves the attached subcontract to provide infectious
waste collection in the franchises held by Waste Management of
Oregon, Inc.”

CLACKAMAS COUNTY BOARD OF COMMISSIONERS

Chair

Recording Secretary



DAN JOHNSON
DIRECTOR

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

September 16, 2021

Board of Commissioners
Clackamas County

Members of the Board:

Approval of an Agreement with
Confluence Environment Center for an AmeriCorps Member

Purpose/Outcome	Embedding an AmeriCorps member from the Confluence Environment Center's AmeriCorps program with Clackamas County.
Dollar Amount and Fiscal Impact	\$14,000
Funding Source	DTD solid waste franchise fees (restricted funds only). No General Funds
Duration	10 months, ending July 29, 2022
Previous Board Action / Review	Board approved an Agreement with Confluence Environmental Center for an AmeriCorps Member in FY 20-21 and in prior years.
Strategic Plan Alignment	<p>1. <i>How does this item align with your department's Strategic Business Plan goals?</i> Our program provides a lead role in meeting the County's obligations to support waste reduction and recycling throughout the county through technical assistance, outreach and education.</p> <p>2. <i>How does this item align with the County's Performance Clackamas goals?</i> In addition to fulfilling state and regional requirements, waste reduction and recycling outreach and technical assistance align with the Performance Clackamas goal to Honor, Utilize, Promote and Invest in our Natural Resources. These activities also support the policy perspective of carbon neutrality.</p>
Counsel Review	This agreement was reviewed by County Counsel (AN) and approved on 08/17/2021.
Procurement Review	<p>1. <i>Was the item processed through Procurement?</i> No</p> <p>2. <i>If no, provide brief explanation:</i> Item is effectively an internship placed through a non-profit AmeriCorps partner; subject to Board approval but not procurement process.</p>
Contact Person	Eben Polk, Supervisor, DTD-Sustainability & Solid Waste – 503-742-4470
Contract No.	Confluence AmeriCorps Service Agreement No CEC-AC-2022-02

BACKGROUND:

This agreement with the Confluence Environment Center, a 501(c)3 non-profit sponsor of AmeriCorps members, confirms the County as host of an AmeriCorps member during Fiscal Year 21-22, to work with the Sustainability & Solid Waste program on waste reduction and recycling education and outreach initiatives focused on Clackamas County multifamily communities and wasted food reduction.

Hosting an AmeriCorps member is included in the approved Sustainability and Solid Waste FY 21-22 budget. The agreement is effective September 8, 2021, through July 29, 2022.

RECOMMENDATION:

Staff respectfully recommends the Board approve this Agreement with Confluence Environment Center for an AmeriCorps Member and authorize Dan Johnson, DTD Director, to sign on behalf of Clackamas County.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Eben Polk". The signature is fluid and cursive, with a large initial "E" and "P".

Eben Polk, Supervisor

Department of Transportation & Development – Sustainability & Solid Waste Program



CONFLUENCE AMERICORPS PROGRAM SERVICE AGREEMENT
Between
Confluence Environmental Center and Clackamas County
#CEC-AC-2022-02

RECITALS

- A.** Confluence Environmental Center (CEC) is a non-profit organization located in Portland, Oregon. CEC oversees a program named the Confluence AmeriCorps Program, (“the AmeriCorps Program”) in technical partnership with Palouse-Clearwater Environmental Institute (PCEI) in Moscow, ID. The AmeriCorps Program engages volunteers to serve on community-based projects to preserve and restore the natural environment in racially, ethnically and socioeconomically diverse communities in the Portland region.
- B.** CEC was awarded formula funding, via Oregon Volunteers, from the Corporation for National and Community Service to implement the AmeriCorps Program. Confluence operates the AmeriCorps Program by enrolling AmeriCorps Members (“Members”), and placing the Members with community organizations, government agencies or school/educational districts.
- C.** The Project Partner (“Partner”) is a community organization, government agency or school/educational district that has a significant unmet community need. CEC will address the community need by placing Members to serve on a service project proposed by the Partner and described in Exhibit C.
- D.** The “Supervisor” is a designated employee or representative of the Project Partner who provides day-to-day supervision in the execution of the service project.
- E.** This AmeriCorps Service Agreement (“Agreement”) addresses the obligations owed by CEC and the Supervisor regarding Members that CEC places with the Partner.

AGREEMENT

- 1.0. PURPOSE:** CEC and the Partner are entering this Agreement to provide Confluence AmeriCorps Members to the Partner. The Partner’s project shall be implemented in accordance with and subject to the terms and conditions in this Agreement.
- 2.0. TERM:** The term of this Agreement is from **September 8, 2021 to July 29, 2022** unless the Agreement is terminated in accordance with Section 6.
- 3.0. RESPONSIBILITIES OF CEC:** CEC shall, through its own activities and/or through its technical partnership with PCEI:
- 3.1.** Perform all duties set forth in Exhibit C.
 - 3.2.** Provide Members with AmeriCorps Pre-Service Orientation.
 - 3.3.** Provide a contact person, specified in Exhibit C, to facilitate and support the Partner in matters relating to the service project, including but not limited to overseeing the completion of Confluence duties, general supervision, recognition, discipline of Members that are placed with the Partner, coordination of invoices, and monthly communications.
 - 3.4.** Provide Members a living allowance and health insurance if the Member is eligible for health benefits.
 - 3.5.** Provide workers’ compensation coverage for Members while the Member conducts approved service

activities.

3.6. Provide Members with appropriate AmeriCorps identifiers, uniforms and necessary protective equipment to wear during service hours.

3.7. Provide all forms the Partner is required to complete, including but not limited to in-kind donation forms and Member evaluation forms.

3.8. Provide a directive to Members requiring them to: review job hazard analysis, observe any required dress codes, use necessary safety equipment, follow all CEC safety procedures and comply with all Partner's administrative procedures, policies, rules and regulations.

3.9. Invoice the Partner for its financial obligations in accordance with Exhibit C.

3.10. Conduct criminal history background checks on all Members. Until final results of the fingerprint background check are confirmed, Members must be accompanied by an authorized supervisor when in contact with vulnerable populations (children, persons age 60 and older, and people with disabilities). CEC shall refuse to engage with such Members if the Member has plead guilty or been convicted of any felony crime involving physical neglect, injury, death or sexual abuse.

3.11. Provide supervision and direction to Members in those situations that pertain to Confluence duties in Exhibit C.

3.12. Ensure that Member payroll taxes are paid to the extent required under the law.

4.0. RESPONSIBILITIES OF THE PARTNER: The Partner shall:

4.1. Perform all Partner duties set forth in Exhibit C.

4.2. Work with Members to complete the service project described in Exhibit C in accordance with and subject to the terms and conditions in this Agreement.

4.3. Provide a Partner representative as specified in Exhibit C to facilitate communications and provide technical assistance and support to the extent it is necessary to ensure successful completion of the project.

4.4. Ensure that permits are obtained and regulatory requirements for project-related work are met.

4.5. Verify Member driving eligibility prior to the start of the service. Confluence does not request driving abstracts or otherwise screen for safe driving.

4.6. Provide reasonable accommodation for Members who disclose a disability.

4.7. Publicize to the media and to the community, to the greatest extent practical, CEC's partnership with the Partner's organization.

4.8. Submit documentation detailing the value of noncash (in-kind) contributions the Partner provided in support of the project.

4.9. Provide adequate training, office space and the necessary equipment for Members to successfully provide project services set forth in Exhibit C.

4.10. Provide tools that are necessary for the project and not already available through CEC.

4.11. Recognize that whenever Members serve with students of local schools and/or with volunteers (youth or adult) on projects outlined in this Agreement, it is in a technical assistance/mentoring capacity. CEC is not responsible for the supervision, discipline, safety or transportation of students or adult volunteers.

4.12. Support CEC policy that requires Members to wear AmeriCorps uniforms or identifiers.

4.13. Comply with the AmeriCorps' Prohibited Activities policy set forth in Exhibit A.

4.14. Pay CEC invoices within 30 days of the invoice date.

4.15. Support the Member in recruiting and tracking volunteers to support the project.

4.16. Refuse to allow any employee under this Agreement who may have recurring access to vulnerable populations (children, persons age 60 and older and individuals with disabilities) to work on the project described in Exhibit C if, to the Partner's actual knowledge, the person has plead guilty or been convicted of any felony crime involving physical neglect, injury, death or a sexual offense.

4.17. Provide supervision and direction to Members while Members are working on the Partner's projects or the Partner's property or service site.

4.18. Ensure the Member is aware of her/his performance throughout the term of service.

4.19. Ensure the Member activities do not generate operating revenue for the organization.

4.20. Ensure the Member does not perform services, duties or other activities that were assigned to an

employee.

4.21. Establish measurable and achievable goals for the project and support the Member in accurately reporting the extent to which these goals were met.

4.22. Evaluate CEC at the conclusion of the project using online Partner surveys and forms provided by CEC.

5.0. PARTNER HANDBOOK: All parties agree to comply with the terms set forth in the enclosed Partner Handbook.

6.0. TERMINATION:

6.1. Mutual Agreement. This Agreement may be terminated by CEC and the Partner's mutual written agreement. This Agreement may be terminated by Partner for convenience upon providing CEC sixty (60) day's written notice. Upon termination pursuant to this Section 6.1, CEC shall be entitled to receive prorated payment for services rendered through the termination date. If CEC has received full payment for the agreement term prior to the termination date, CEC shall retain an amount equal to its prorated share through the termination date and CEC shall reimburse the Partner the balance of the payment for the agreement term within thirty (30) days of the termination date. Prorations shall be based on the full agreement term defined in Section 2 of this Agreement.

6.2. Breach. This Agreement may be terminated by either CEC or the Partner if the other party violates a provision of this Agreement and the violation is not adequately addressed within fifteen (15) days after the violating party receives notice of the violation. If CEC terminates this Agreement pursuant to this Section 6.2, the Partner shall pay CEC the entire balance of any outstanding fees that are owed pursuant to Exhibit C. The outstanding balance shall be paid within thirty (30) days of the date CEC notifies the Partner that the Agreement has been terminated. If Partner terminates this Agreement pursuant to Section 6.2, CEC will only be entitled to receive a prorated payment for services rendered through the termination date. If CEC has received full payment for the agreement term prior to the termination date, CEC shall retain an amount equal to its prorated share through the termination date and CEC shall reimburse the Partner the balance of the payment for the agreement term within thirty (30) days of the termination date. Prorations shall be based on the full agreement term defined in Section 2 of this Agreement.

6.3. Immediate Termination. CEC or the Partner may immediately terminate this Agreement if the other party knowingly allows any person who will be working on the project as described in Exhibit C and who may have recurring access to vulnerable populations (children, persons age 60 and older and individuals with disabilities) if any such person has plead guilty or been convicted of any felony crime involving physical neglect, injury, death or sexual abuse.

7.0. ASSIGNMENT: Neither CEC nor the Partner may assign this Agreement, or any interest herein, without the prior written consent of the other party.

8.0. EMPLOYMENT RELATIONSHIP: All Parties understand and agree that this Agreement is not intended and shall not be construed as creating an employment relationship between CEC and the Partner or between Members and the Partner, their respective officers, employees and agents. All parties agree that Members are solely the employee of CEC, shall not be considered or treated as employees of the Partner.

9.0. INDEMNIFICATION:

9.1. CEC. To the extent authorized by Oregon law, CEC agrees to defend, indemnify and hold harmless the Partner and its officers, employees and agents from and against claims, actions, proceedings, liabilities, losses, damages, costs and expenses, including attorney's fees, that may arise as a result of CEC's performance under this Agreement.

9.2. Partner. Subject to the conditions and limitations of Oregon Tort Claims Act (ORS 30.260 through 30.300) and the Oregon Constitution Article XI, Section 10, Partner agrees to defend, indemnify and hold harmless CEC and their officers, employees and agents from and against claims, actions, proceedings, liabilities, losses,

damages, costs and expenses, including attorney's fees, that may arise as a result of the Partner's performance under this Agreement.

10.0. INSURANCE:

10.1. CEC. Through its technical partnership with PCEI, CEC will carry Workers' Compensation insurance for Members to cover claims or compensation that is owed for injuries that Members may incur while Members are providing the services described in Exhibit C. Partner will not direct Member to provide services beyond those identified in Exhibit C or to provide services in a manner that violates the law or conflicts with any requirements of this Agreement.

10.2. Partner. Unless waived in writing by an authorized CEC representative, the Partner shall be self-insured or carry general liability insurance and automobile insurance if Members are using Partner vehicles that cover the Members while Members are providing project services that are identified in Exhibit C. The Partner shall provide evidence in a form that is approved by CEC that the Partner has the insurance required under this Section 10.2.

11.0. WAIVER: Absent a written Agreement signed by both CEC and the Partner acknowledging a waiver of any provision in this Agreement, failure by either party at any time to require performance of any provision in this Agreement by the other party shall in no way affect the parties' rights to enforce the provisions in this Agreement, nor shall any waiver by a party of the breach of this Agreement be held to be a waiver of any succeeding breach or a waiver of this clause.

12.0. SEVERABILITY: If any terms in this Agreement or application thereof to any person or circumstance are held invalid, then such invalidity shall not affect other terms or applications of the Agreement which can be given effect without the invalid term or application, and to this end, the terms of this Agreement are declared severable.

13.0. MEDIATION: If a dispute arises out of or relates to this Agreement, and if the dispute cannot be settled through negotiation, CEC and the Partner agree first to try in good faith to settle the dispute by mediation.

14.0. COMPLIANCE WITH APPLICABLE LAW: The Parties agree to comply with all federal, state and local laws, including but not limited to statutes, rules and regulations which prohibit discrimination on the basis of race, color, creed, religion, national origin, age, gender, sexual orientation, marital status or the presence of any sensory, mental or physical disability, or which prohibit the release of confidential student information (the Family Educational Rights and Privacy Act) or which require child abuse reporting.

15.0. NOTICE: All notices required under this Agreement shall be deemed to have been properly provided upon deposit of the notice in the United States mail, postage prepaid, addressed to the parties as follows:

AmeriCorps Program:

Confluence Environmental Center
5441 SE Belmont Street, Suite 25
Portland, OR 97215

Project Partner:

Clackamas County, Sustainability & Solid Waste
150 Beaver Creek Road
Oregon City, OR 97045

16.0. WHOLE AGREEMENT: The Parties agree that this Agreement constitutes the entire agreement between the parties and supersedes all prior or existing written or oral agreements between the parties and may not be amended other than in writing signed by the parties.

17.0. AUTHORITY: The individuals executing this Agreement represent that they have the legal authority under applicable laws or actions by their respective Boards of Directors to execute this Agreement and bind their

respective organization.

18.0 Required Terms: The provisions of Oregon public contracting law, ORS 279B.020 through 279B.235, to the extent applicable, are incorporated herein by this reference.

19.0. 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.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date and year indicated below. By signing, the Partner certifies that the project described in Exhibit C is unfunded or underfunded to the extent that the Partner requires assistance from Members to complete the project and that Members are not displacing existing or potential workers to complete the project.

Confluence Environmental Center (CEC)

Adriana Escobedo-Land
CEC Board President **Name**


CEC Board President **Signature**

7/21/2021
Date

Partner Organization

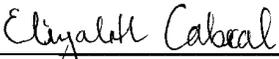
Agreement Signee **Name**

Agreement Signee **Signature**

Date

Confluence AmeriCorps Program

Elizabeth Cabral
Program Director **Name**


Program Director **Signature**

7/15/2021
Date

Approved as to Form (if applicable)

Andrew Naylor
County Attorney/Designee **Name**


County Attorney/Designee **Signature**

08/17/2021
Date

Please review, sign/date and **email** your Partner Agreement to Elizabeth Cabral at ecabral@confluencecenter.org within 30 days of receipt.

An executed copy will be emailed to you.

AMERICORPS SERVICE AGREEMENT
Exhibit A - Prohibited Activities and Ineligible Organizations

Federal law and the Corporation for National and Community Service (“Corporation”) policy prohibit AmeriCorps Programs and Members from engaging in certain activities while using Corporation funds or on Corporation time. Members are not prohibited from engaging in any of these activities in their personal capacities and on their own time. If there is any question about whether a certain activity is permissible, please contact Confluence. Examples of prohibited activities include, but are not limited to:

- a. Attempting to influence legislation;
- b. Organizing or engaging in protests, petitions, boycotts or strikes;
- c. Assisting, promoting or deterring union organizing;
- d. Impairing existing contracts for services or collective bargaining Contracts;
- e. Engaging in partisan political activities, or other activities designed to influence the outcome of an election to any public office;
- f. Participating in, or endorsing, events or activities that are likely to include advocacy for or against political parties, political platforms, political candidates, proposed legislation or elected officials;
- g. Engaging in religious instruction, conducting worship services, providing instruction as part of a program that includes mandatory religious instruction or worship, constructing or operating facilities devoted to religious instruction or worship, maintaining facilities primarily or inherently devoted to religious instruction or worship, or engaging in any form of religious proselytization;
- h. Providing a direct benefit to--
 - i. a business organized for profit,;
 - ii. a labor union;
 - iii. a partisan political organization;
 - iv. a non-profit organization that fails to comply with the restrictions contained in Section 501c(3) of the Internal Revenue Code of 1986 except that nothing in this section shall be construed to prevent Members from engaging in advocacy activities undertaken on their own initiative; and
 - v. an organization engaged in the religious activities described in paragraph (g) of this section, unless Corporation assistance is not used to support the religious activities;
- i. Conducting a voter registration drive or using Corporation funds to conduct a voter registration drive;
- j. Providing abortion services or referrals for receipt of such services; and
- k. Election and Polling Activities. AmeriCorps member may not provide services for election or polling locations or in support of such activities.
- l. Census Activities. AmeriCorps members and volunteers associated with AmeriCorps grants may not engage in census activities during service hours. Being a census taker during service hours is categorically prohibited. Census-related activities (e.g., promotion of the Census, education about the importance of the Census) do not align with AmeriCorps State and National objectives. What members and volunteers do on their own time is up to them, consistent with program policies about outside employment and activities.
- m. Such activities as the Corporation may prohibit.

AmeriCorps members may not engage in the above activities directly or indirectly by recruiting, training, or managing others for the primary purpose of engaging in one of the activities listed above. Individuals may exercise their rights as private citizens and may participate in the activities listed above on their initiative, on non-AmeriCorps time, and using non-Corporation funds. Individuals should not wear the AmeriCorps logo while doing so.

Non-Displacement

Programs may not permit a Member to fill in for an absent employee. By law, Members may not under any circumstances perform services, duties, or activities that had been assigned to an employee or to an employee who has recently resigned or has been discharged. Programs may not use a Member in a way that will displace an employee or position or infringe on an employee's promotional opportunities. Provisions include:

- a. An employer may not displace an employee or position, including partial displacement such as reduction in hours, wages, or employment benefits, as a result of the use by such employer of a participant in a program receiving Corporation assistance;
- b. An organization may not displace a volunteer by using a participant in a program receiving Corporation assistance;
- c. A service opportunity will not be created under this chapter that will infringe in any manner on the promotional opportunity of an employed individual;
- d. A participant in a program receiving Corporation assistance may not perform any services or duties or engage in activities that would otherwise be performed by an employee as part of the assigned duties of such employee;
- e. A participant in any program receiving assistance under this chapter may not perform any services or duties, or engage in activities, that –
 - i. Will supplant the hiring of employed workers; or
 - ii. Are services, duties, or activities with respect to which an individual has recall rights pursuant to a collective bargaining agreement or applicable personnel procedures
- f. A participant in any program receiving assistance under this chapter may not perform services or duties that have been performed by or were assigned to any -
 - i. Presently employed worker;
 - ii. Employee who recently resigned or was discharged;
 - iii. Employee who is subject to a reduction in force or who has recall rights pursuant to a collective bargaining agreement or applicable personnel procedures;
 - iv. Employee who is on leave (terminal, temporary, vacation, emergency, or sick); or
 - v. Employee who is on strike or who is being locked out.

AMERICORPS SERVICE AGREEMENT
Exhibit B – Funding Source Certification
(To be completed and signed by the Supervisor)

1. Are the matching cash funds for this project coming from a federal source?

____ (Yes, go to 2) (No)

2. If yes, can you certify that the federal funds may be used to match funds for other federal grants*?

____ (Yes) ____ (No)

*To make this determination, check with your federal funder or refer to the federal guidance for your federal funding source. If you can use funds, please provide a letter from the authorized federal agent certifying that funds can be used to match other federal grants, in this case, with **Corporation for National and Community Service**. Please print your certification on letterhead, sign/date and submit to Confluence Environmental Center with your signed agreement.

Eben Polk _____

Supervisor **Name**

 _____

Supervisor **Signature**

08/17/21 _____

Date

AMERICORPS SERVICE AGREEMENT
Exhibit C – Scope of Service

1. **Position Title:** Waste Reduction Specialist
2. **Partner Name:** Clackamas County
3. **Service Site Location(s):** 150 Beaver Creek Road, Oregon City, OR 97045

4. **Contact Names:**

Confluence AmeriCorps Representative

Name: Elizabeth Cabral
Title: Program Director
Phone: 503-719-6779
Email: ecabral@confluencecenter.org

Partner Representative

Name: Eben Polk
Title: Program Supervisor
Phone: 503-742-4470
Email: epolk@clackamas.us

Project Supervisor

Name: Eben Polk
Title: Program Supervisor
Phone: 503-742-4470
Email: epolk@clackamas.us

5. **Service Activity Schedule:**

All Supervisors are required to attend *Supervisor Orientation* on August 19, 2021. The Member will begin their term of service with a CEC Member orientation beginning on September 8, 2021. The Supervisor will attend the final day of *Member Orientation* on September 14, 2021. The Supervisor will begin Site and Project Onboarding for the Member beginning September 15, 2021. The Member will serve 32-40 hours per week through July 29, 2022. The Supervisor will receive a Confluence AmeriCorps Program Calendar at Supervisor Orientation which will include dates the Member will not be available at the service site.

6. **Project Summary:**

In Partnership with the Confluence Environmental Center, the Member will help to identify, coordinate, and increase food donation opportunities to local food pantries to increase food donation and access to food, reduce wasted food, and reduce the environmental impacts of that wasted food (50%).

The Member will also help us bring greater consistency and value to recycling and waste reduction in apartment and condo communities, targeting low-income, racially diverse, and underserved residents (per Oregon's Affordable Housing Inventory). This position will build on the success of previous AmeriCorps members and pilot new programming to pair service-level and infrastructure analyses with outreach and education for a more holistic, effective, and inclusive approach to community assistance (30%).

The Member will participate in Confluence led professional development activities: Professional Development Series, completing a Change Agent Project, team meetings, National Service events and other self-directed development opportunities (20%).

7. **Project Resources and Training Provided by Partner:**

The Partner will provide all training and equipment necessary to successfully complete the project. The Partner will serve as the direct supervisor for the Member and will meet with the Member regularly to review and set project goals.

8. **Project Resources and Training Provided by CEC:**

CEC, through its technical partnership with PCEI, will provide the Member living allowance and health insurance, if eligible. CEC will provide a Pre-Service orientation for the Member that will include an overview of AmeriCorps, Confluence rules and regulations, AmeriCorps Prohibited Activities, as well as other training that will prepare the Member for their term of service. CEC will require Members to attend

Leadership Development trainings, monthly Team Meetings and two National Days of Service.

9. Evaluation method:

The Partner will develop tracking and reporting systems to measure outcomes of the project in accordance with the AmeriCorps Performance Measures. CEC will provide forms and technical assistance.

10. Project Costs:

Project costs, which include all AmeriCorps Program costs, are paid with AmeriCorps funds and funds provided by the Partner.

- a. Partner Cash Match Amount: **\$14,000**

11. Schedule of Payment:

Confluence will invoice the Partner as indicated below. Partner will pay invoice within 30 days of the invoice date. Partner will make checks payable to **Confluence Environmental Center**.

- a. Total Amount of compensation under this agreement shall not exceed: **\$14,000**
- b. Invoice Schedule: **August 2, 2021 (net 30)**

12. Project In Kind:

In-kind donations are an integral part of the Confluence AmeriCorps Program. All in-kind donations must be accurately verified and submitted on the in kind reporting form provided by Confluence.

- a. Partner In Kind Amount: **\$200**
- b. In Kind Report Due **February 15, 2022**

13. Authorizing Signatures:

Confluence AmeriCorps Program

Elizabeth Cabral
Program Director **Name**

Elizabeth Cabral
Program Director **Signature**

7/15/2021
Date

Partner Organization

Eben Polk
Supervisor **Name**

Eben Polk
Supervisor **Signature**

8/17/21
Date



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:

Approval of a Contract with Emery & Sons Construction Group, LLC. for the
Sunnyside Road ADA Improvements: 122nd -132nd

Purpose/Outcome	This contract will retrofit 1 signalized intersection corner and 5 non-signalized intersection corners for ADA compliance along Sunnyside Road.
Dollar Amount and Fiscal Impact	Contract Value \$744,914.50, budgeted in DTD CIP Project #22292.
Funding Source	County Road Funds.
Duration	Contract Execution through June 30, 2022.
Previous Board Action/Review	09/07/21: Discussion item at issues
Strategic Plan Alignment	1. How does this item align with your department's Strategic Business Plan goals? This item supports the DTD Strategic Focus on "The public's increasing expectation that the transportation system will be safer and support a healthier community." 2. How does this item align with the County's Performance Clackamas goals? This item aligns with "Build a strong infrastructure" and "Ensure safe, healthy and secure communities" by providing ADA compliant curb ramps and traffic signals ensuring safer pedestrian travel.
Counsel Review	Counsel Date: August 23, 2021 Counsel Initials: AN
Procurement Review	Was this project processed through Procurement? Yes.
Contact Person	Bob Knorr, Project Manager, Transportation and Development 503-742-4680
Contract No.	4331

Background:

This contract will retrofit 1 signalized intersection with 6 total corners and 5 non-signalized intersections with 18 total corners for ADA compliance. This work is in advance of an asphalt concrete overlay scheduled for the summer of 2022. Work consists of furnishing, installing and removing temporary traffic control devices and temporary erosion control measures, constructing concrete curb ramp retrofits, constructing pedestrian push button retrofits, installing or reinstalling new permanent signing and pavement markings, and other incidental work as called by the special provisions and plans.

Substantial completion of construction is expected by April 30, 2022. Final completion of construction is required by June 30, 2022.

Procurement Process:

This project was advertised in accordance with ORS and LCRB Rules on February 22, 2021. Bids were publicly opened on August 3, 2021. The County received four (4) bids: MEI Group, \$927,419.00; Emery & Sons Construction Group, LLC. \$744,914.50; Brown Contracting, \$792,323.00; and Carter & Company, \$816,524.77. Engineers estimate was \$877,000.00. After review of the bids, Emery & Sons Construction Group, LLC. was determined to be the lowest responsive bidder.

Recommendation:

Staff respectfully recommends that the Board approve and sign this public improvements contract with Emery & Son Construction Group, LLC for the Sunnyside Road ADA 122nd -132nd Project.

Sincerely,

Bob Knorr

Bob Knorr,
Project Manager

Placed on the BCC Agenda _____ by Procurement



CLACKAMAS COUNTY
PUBLIC IMPROVEMENT CONTRACT
Contract #4331

This Public Improvement Contract (the "Contract"), is made by and between the Clackamas County, a political subdivision of the State of Oregon, hereinafter called "Owner," and **Emery & Sons Construction Group, LLC**, hereinafter called the "Contractor" (collectively the "Parties"), shall become effective on the date this Contract has been signed by all the Parties and all County approvals have been obtained, whichever is later.

Project Name: # 2021-61 Sunnyside Road ADA 122nd-132nd

1. Contract Price, Contract Documents and Work.

The Contractor, in consideration of the sum of **seven hundred forty-four thousand nine hundred fourteen dollars and fifty cents (\$744,914.50)** (the "Contract Price"), to be paid to the Contractor by Owner in the manner and at the time hereinafter provided, and subject to the terms and conditions provided for in the Instructions to Bidders and other Contract Documents (as defined in the project specifications) referenced within the Instructions to Bidders), all of which are incorporated herein by reference, hereby agrees to perform all Work described and reasonably inferred from the Contract Documents. The Contract Price is the amount contemplated by the Base Bid as indicated in the accepted Bid.

Also, the following documents are incorporated by reference in this Contract and made a part hereof:

- Notice of Contract Opportunity
- Supplemental Instructions to Bidders
- Bid Form
- Performance Bond and Payment Bond
- Payroll and Certified Statement Form
- Addendum #1
- Instructions to Bidders
- Bid Bond
- Public Improvement Contract Form
- Prevailing Wage Rates
- Plans, Specifications and Drawings

The Plans, Specifications and Drawings expressly incorporated by reference into this Contract includes, but is not limited to, the Special Provisions for Highway Construction (the "Specifications"), together with the provisions of the Oregon Standard Specifications for Construction (2018) referenced therein.

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

2. Representatives.

Contractor has named Vince Makinson as its Authorized Representative to act on its behalf. Owner designates, or shall designate, its Authorized Representative as indicted below (check one):

Unless otherwise specified in the Contract Documents, the Owner designates Joel Howie as its Authorized Representative in the administration of this Contract. The above-named individual shall be the initial point of contact for matters related to Contract performance, payment, authorization, and to carry out the responsibilities of the Owner.

Name of Owner's Authorized Representative shall be submitted by Owner in a separate writing.

3. Key Persons.

The Contractor's personnel identified below shall be considered Key Persons and shall not be replaced during the project without the written permission of Owner, which shall not be unreasonably withheld. If the Contractor intends to substitute personnel, a request must be given to Owner at least 30 days prior to the intended time of substitution. When replacements have been approved by Owner, the Contractor shall provide a transition period of at least 10 working days during which the original and replacement personnel shall be working on the project concurrently. Once a replacement for any of these staff members is authorized, further replacement shall not occur without the written permission of Owner. The Contractor's project staff shall consist of the following personnel:

Project Executive: Dan Johnston shall be the Contractor's project executive, and will provide oversight and guidance throughout the project term.

Project Manager: Aaron Slowik shall be the Contractor's project manager and will participate in all meetings throughout the project term.

Job Superintendent: Christian Spier shall be the Contractor's on-site job superintendent throughout the project term.

Project Engineer: Brandon Zaikoski shall be the Contractor's project engineer, providing assistance to the project manager, and subcontractor and supplier coordination throughout the project term.

4. Contract Dates.

COMMENCEMENT DATE: Upon Issuance of Notice to Proceed ("NTP")

SUBSTANTIAL COMPLETION DATE: April 30, 2022

FINAL COMPLETION DATE: June 30, 2022

Time is of the essence for this Contract. It is imperative that the Work in this Contract reach Substantial Completion and Final Completion by the above specified dates.

5. Insurance Certificates and Required Performance and Payment Bonds.

5.1 In accordance with Section 00170.70 of the Specifications, Contractor shall furnish proof of the required insurance naming Clackamas County as an additional insured. Insurance certificates may be returned with the signed Contract or may be emailed to Procurement@clackamas.us.

5.2 Primary Coverage: Insurance carried by Contractor under the Contract shall be the primary coverage. The coverages indicated are minimums unless otherwise specified in the Contract Documents.

5.2.1 Workers' Compensation: All employers, including Contractor, that employ subject workers who work under the Contract 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. This shall include Employer's Liability Insurance with coverage limits of not less than the minimum amount required by statute for each accident. Contractors who perform the Work without the assistance or labor of any employee need not obtain such coverage if the Contractor certifies so in writing. Contractor shall ensure that each of its Subcontractors complies with these requirements. The Contractor shall require proof of such Workers' Compensation coverage by receiving and keeping on file a certificate of insurance from each Subcontractor or anyone else directly employed by either the Contractor or its Subcontractors.

5.3 Builder's Risk Insurance: During the term of the Contract, for new construction the Contractor shall obtain and keep in effect Builder's Risk insurance on an all risk forms, including earthquake and flood, for an amount equal to the full amount of the Contract, plus any changes in values due to modifications, Change Orders and loss of materials added. Such Builder's Risk shall include, in addition to earthquake and flood, theft, vandalism, mischief, collapse, transit, debris removal, and architect's fees "soft costs" associated with delay of Project due to insured peril. Any deductible shall not exceed \$50,000 for each loss, except the earthquake and flood deductible which shall not exceed 2 percent of each loss or \$50,000, whichever is greater. The deductible shall be paid by Contractor. The policy will include as loss payees Owner, the Contractor and its Subcontractors as their interests may appear.

5.4 Builder's Risk Installation Floater: For Work other than new construction, Contractor shall obtain and keep in effect during the term of the Contract, a Builder's Risk Installation Floater for coverage of the Contractor's labor, materials and equipment to be used for completion of the Work performed under the Contract. The minimum amount of coverage to be carried shall be equal to the full amount of the Contract. The policy will include as loss payees Owner, the Contractor and its Subcontractors as their interests may appear. Owner may waive this requirement at its sole and absolute discretion.

5.4.1 Such insurance shall be maintained until Owner has occupied the facility.

5.4.2 A loss insured under the Builder's Risk insurance shall be adjusted by the Owner and made payable to the Owner as loss payee. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner. The Owner shall have power to adjust and settle a loss with insurers.

5.5 "Tail" Coverage: If any of the required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of the Contract for a duration of 36 months or the maximum time period available in the marketplace if less than 36 months. Contractor shall furnish certification of "tail" coverage as described or continuous "claims made" liability coverage for 36 months following Final Completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided its retroactive date is on or before the effective date of the Contract. Owner's receipt of the policy endorsement evidencing such coverage shall be a condition precedent to Owner's obligation to make final payment and to Owner's final acceptance of Work or services and related warranty (if any).

5.6 Notice of Cancellation or Change: If the Contractor receives a non-renewal or cancellation notice from an insurance carrier affording coverage required herein, or receives notice that coverage no longer complies with the insurance requirements herein, Contractor agrees to notify Owner by fax within five (5) business days with a copy of the non-renewal or cancellation notice, or written specifics as to which coverage is no longer in compliance. When notified by Owner, the Contractor agrees to stop Work pursuant to the Contract at Contractor's expense, unless all required insurance remain in effect. Any failure to comply with the reporting provisions of this insurance, except for the potential exhaustion of aggregate limits, shall not affect the coverages provided to the Owner and its institutions, divisions, officers, and employees.

Owner shall have the right, but not the obligation, of prohibiting Contractor from entering the Project Site until a new certificate(s) of insurance is provided to Owner evidencing the replacement coverage. The Contractor agrees that Owner reserves the right to withhold payment to Contractor until evidence of reinstated or replacement coverage is provided to Owner.

5.7 Before execution of the Contract, the Contractor shall file with the Construction Contractors Board, and maintain in full force and effect, the separate public works bond required by Oregon Revised Statutes, Chapter 279C.830 and 279C.836, unless otherwise exempt under those provisions. The Contractor shall also include in every subcontract a provision requiring the Subcontractor to have a public works bond filed with the Construction Contractors Board before starting Work, unless otherwise exempt, and shall verify that the Subcontractor has filed a public works bond before permitting any Subcontractor to start Work.

5.8 When the Contract Price is \$50,000 or more, the Contractor shall furnish and maintain in effect at all times during the Contract Period a performance bond in a sum equal to the Contract Price and a separate payment bond also in a sum equal to the Contract Price. Contractor shall furnish such bonds even if the Contract Price is less than the above thresholds if otherwise required by the Contract Documents.

5.9 Bond forms furnished by the Owner and notarized by Contractor's surety company authorized to do business in Oregon are the only acceptable forms of performance and payment security, unless otherwise specified in the Contract Documents.

6. Responsibility for Damages/Indemnity.

6.1 Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay that may be caused by, or result from, the carrying out of the Work to be done under the Contract, or from any act, omission or neglect of the Contractor, its Subcontractors, employees, guests, visitors, invitees and agents.

6.2 To the fullest extent permitted by law, Contractor shall indemnify, defend (with counsel approved by Owner) and hold harmless the Owner and its elected officials, officers, directors, agents, and employees (collectively "Indemnitees") from and against all liabilities, damages, losses, claims, expenses, demands and actions of any nature whatsoever which arise out of, result from or are related to: (a) any damage, injury, loss, expense, inconvenience or delay described in this Section 6.1; (b) any accident or occurrence which happens or is alleged to have happened in or about the Project Site or any place where the Work is being performed, or in the vicinity of either, at any time prior to the time the Work is fully completed in all respects; (c) any failure of the Contractor to observe or perform any duty or obligation under the Contract Documents which is to be observed or performed by the Contractor, or any breach of any agreement, representation or warranty of the Contractor contained in the Contract Documents or in any subcontract; (d) the negligent acts or omissions of the Contractor, a Subcontractor or anyone directly or indirectly employed by them or any one of them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder (except to the extent otherwise void under ORS 30.140); and (e) any lien filed upon the Project or bond claim in connection with the Work. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 6.2.

6.3 In claims against any person or entity indemnified under Section 6.2 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 6.2 shall not be limited on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

7. Tax Compliance.

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.

8. Confidential Information.

Contractor acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Contract, be exposed to or acquire information that is confidential to Owner. Any and all information of any form obtained by Contractor or its employees or agents in the performance of this Contract shall be deemed confidential information of Owner ("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 purpose unless specifically authorized in writing under this Contract.

9. Counterparts.

This Contract may be executed in several counterparts, all of which when taken together shall constitute an agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the Contract so executed shall constitute an original.

10. Integration.

All provisions of state law required to be part of this Contract, whether listed in the General or Special Conditions or otherwise, are hereby integrated and adopted herein. Contractor acknowledges the obligations thereunder and that failure to comply with such terms is a material breach of this Contract.

The Contract Documents constitute the entire agreement between the parties. There are no other understandings, agreements or representations, oral or written, not specified herein regarding this Contract. Contractor, by the signature below of its authorized representative, hereby acknowledges that it has read this Contract, understands it, and agrees to be bound by its terms and conditions.

11. Liquidated Damages

The Contractor acknowledges that the Owner will sustain damages as a result of the Contractor's failure to substantially complete the Project in accordance with the Contract Documents. These damages may include,

but are not limited to delays in completion, use of the Project, and costs associated with Contract administration and use of temporary facilities.

11.1 Liquidated Damages shall be as follows if the actual Substantial Completion exceeds the required date of Substantial Completion:

11.1.1. \$ 700 per Calendar day past the Substantial Completion date as identified in section 00180.85 (b) and 00180.85 (c).

12. 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 including, but not limited to, compliance 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.

13. Responsibility for Taxes. Contractor is solely responsible for payment of any federal, state, or local taxes required as a result of the Contract or the Work including, but not limited, to payment of the corporate activity tax imposed under enrolled HB 3427 (2019 Oregon regular legislative session). Contractor may not include its federal, state, or local tax obligations as part of the cost to perform the Work.

14. Escrow and Retainage. If retainage is withheld, unless the Contractor requests and the Owner accepts a form of retainage permitted under ORS 279C.560, the Owner will deposit the retainage in an interest-bearing escrow account as required by ORS 279C.570(2). The Contractor shall execute such documentation and instructions respecting the interest-bearing escrow account as the Owner may require to protect its interests, including but not limited to a provision that no funds may be paid from the account to anyone without the Owner's advance written authorization.

15. 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.

Signature page to follow.



September 16, 2021

Board of County Commissioners
 Clackamas County

Members of the Board:

Approval of a Funding Agreement between
 Clackamas County and Clackamas County Arts Alliance

Purpose/Outcomes	Clackamas County is providing support to the Clackamas County Arts Alliance (CCAA) to provide support and promote access to arts and culture across the entire County.
Dollar Amount and Fiscal Impact	The agreement is for \$192,405 total dollars.
Funding Source	General Fund dollars approved by the Board of County Commissioners in the 2021-2022 budget cycle.
Duration	Becomes effective upon all signatures and ends on June 30, 2022
Strategic Plan Alignment	Grow a Vibrant Economy Honor, Utilize, Promote and Invest in our Natural Resources Ensure Safe, Healthy and Secure Communities
Previous Board Action	The Board of County Commissioners approved the 2020-21 agreement in April 2020.
County Counsel Review	This Service Level Agreement has been reviewed and approved by Andrew Naylor on 09/01/2021.
Procurement Review	No, funding agreements are not reviewed by Procurement.
Contact Person	Nancy Bush x8893

BACKGROUND:

CCAA will use funds to partially support training and capacity-building work for businesses, organizations, and entrepreneurs; public art exhibitions throughout the County; robust arts education program in regional schools and social service organizations; and an award-winning arts diversion program operated with the County's Juvenile Department. General Fund dollars also support highly successful marketing efforts, giving CCAA the ability to reach more residents, serve more youth and grow private-sector contributions.

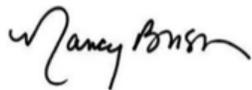
CCAA will serve as both liaison and advocate for the county arts and culture community, providing leadership, resources, and direction as well as functioning as a convener (by discipline) for individual artist groups, and to the various arts and culture organizations throughout Clackamas County.

The total Agreement is for \$192,405. The Agreement requires \$27,000 of those dollars be passed to Young Audiences of Oregon for arts programming through Right Brain Initiative, an innovative arts education program serving 6,300 students in 22 schools in Clackamas County.

RECOMMENDATION:

Staff respectfully recommends approval of the Funding Agreement between Clackamas County and Clackamas County Arts Alliance.

Sincerely,

A handwritten signature in black ink that reads "Nancy Bush". The signature is written in a cursive, flowing style.

Nancy Bush
Clackamas County Operations Officer

**FUNDING AGREEMENT
BETWEEN CLACKAMAS COUNTY
AND CLACKAMAS COUNTY ARTS ALLIANCE**

THIS AGREEMENT (this "Agreement") is entered into and between **Clackamas County** ("County"), a political subdivision of the State of Oregon, and Arts Action Alliance Foundation, dba **Clackamas County Arts Alliance** ("CCAA"), an Oregon non-profit, collectively referred to as the "Parties" and each a "Party."

RECITALS

Clackamas County desires to provide CCAA funding to support arts and culture in Clackamas County, which was approved in the FY21/22 budget adopted by the Board of Commissioners on June 16, 2021.

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 upon execution, and shall expire June 30, 2022.
2. **Scope of Work and Consideration.** County agrees to grant CCAA a sum not to exceed \$192,405.00 for CCAA to accomplish the work described in Exhibit A, attached hereto and incorporated herein ("Work").
3. **Payment.** County will grant funds in two payments. Following execution of the Agreement, and within thirty (30) days following receipt of a written letter requesting disbursement, County will disburse the first payment of \$96,202.50. County will disburse the second payment of \$96,202.50 no earlier than January 31, 2022.
4. **Representations and Warranties.**
 - A. *CCAA Representations and Warranties:* CCAA represents and warrants to County that CCAA 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 CCAA enforceable in accordance with its terms.
 - B. *County Representations and Warranties:* County represents and warrants to CCAA 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.
5. **Termination.**
 - A. **Termination for Convenience.** Either the County or CCAA may terminate this Agreement at any time prior to County distributing funds to CCAA. After County has distributed funds to CCAA, either Party may terminate this Agreement upon 120 days written notice to the other Party. In the event a party terminates this agreement under this Section 5 A, CCAA shall immediately return all unspent funds to the County.
 - B. **Termination for Breach.** Either the County or CCAA may terminate this Agreement in the

event of a breach of the Agreement by the other Party. 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. Upon termination for CCAA's breach, County shall have all remedies available to it at law, in equity, or under this Agreement including, but not limited to, requiring CCAA to return all unspent funds and to repay County for any funds used by MO CCAA OT in violation of this Agreement.

- C. Termination for Non-appropriation/Change in Law. Either Party may terminate this Agreement in the event either Party fails to receive expenditure authority sufficient to allow the Party, in the exercise of its reasonable administrative discretion, to perform under this Agreement. Additionally, either Party may terminate this Agreement if federal or state laws, regulations or guidelines are modified or interpreted in such a way that performance under this Agreement is prohibited. In the event of termination under this Subsection C, CCAA shall immediately return all unspent funds to the County.
- D. Waiver. The County or CCAA 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.
- E. Reservation of Remedies. The termination of this Agreement, regardless of cause, shall not prejudice any rights or obligations accrued to the Parties prior to termination. Each party shall have all rights and remedies available to it at law, in equity, or under this Agreement.

6. Indemnification.

- A. Subject to the Oregon Tort Claims Act and the Oregon Constitution, CCAA agrees to indemnify, hold harmless and defend 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 CCAA or CCAA employees, subcontractors, or agents. However, neither CCAA nor any attorney engaged by CCAA shall defend the claim in the name of County or any department of County, nor purport to act as legal representative of County or any of its departments, without first receiving from the Clackamas County Counsel's Office authority to act as legal counsel for County, nor shall CCAA settle any claim on behalf of County without the approval of the Clackamas County Counsel's Office. County may, at its election and expense, assume its own defense and settlement.

7. Insurance.

- A. CCAA 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. Such insurance shall name Clackamas County, and its officers, elected officials, agents, and employees as additional insureds.

B. CCAA agrees to provide statutory workers' compensation insurance coverage for all subject workers it employs, as defined in ORS 656.027, and in compliance with ORS 656.017, unless the workers meet the requirement for an exemption under ORS 656.126(2). CCAA agrees to furnish the County with evidence of this workers' compensation coverage.

8. 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. Clackamas County Operations Officer, or their designee will act as liaison for the County.

Nancy Bush
2051 Kaen Road
Oregon City, OR 97045
nbush@clackamas.us | (503) 655-8893

Executive Director or their designee will act as liaison for CCAA.

Dianne Alves
Executive Director, Clackamas County Arts Alliance
PO Box 2181
Oregon City, Oregon 97045
dianne@clackamasartsalliance.org | 503-481-1288

9. 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 County and Clackamas County without giving effect to the conflict of law provisions thereof. Any claim between County and CCAA 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 County Court for the County 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. CCAA, by execution of this Agreement, hereby consents to the in 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 including, but not limited to, the requirement that use of the funds under this Agreement be used for purposes consistent with ORS Chapter 461 and other applicable law. 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.** CCAA 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. CCAA 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, CCAA shall permit the County’s authorized representatives’ access to the Records at reasonable times and places for purposes of examining and copying.
- E. Reserved.**
- F. 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.
- G. 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.
- H. 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.

- I. **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.
- J. **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
- K. **No Third-Party Beneficiary.** CCAA 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.
- L. **Subcontract and Assignment.** CCAA 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 CCAA of any of its duties or obligations under this Agreement.
- M. **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.
- N. **Survival.** All provisions in Sections 4, 6, and 9 (A), (C), (D), (E), (F), (G), (H), (I), (J), (K), (N), (P), (Q), (S), and (T) shall survive the termination of this Agreement, together with all other rights and obligations herein which by their context are intended to survive.
- O. **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.
- P. **Time is of the Essence.** CCAA agrees that time is of the essence in the performance this Agreement.
- Q. **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
- R. **Force Majeure.** Neither CCAA nor County shall be held responsible for delay or default caused by events outside of the CCAA or County's reasonable control including, but not

limited to, fire, terrorism, riot, acts of God, or war. However, CCAA 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.

S. Confidentiality. CCAA 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 CCAA or its employees or agents in the performance of this Agreement shall be deemed confidential information of the County (“Confidential Information”). CCAA agrees to hold Confidential Information in strict confidence, using at least the same degree of care that CCAA 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.

T. 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

**Arts Action Alliance Foundation, dba
Clackamas County Arts Alliance**

Chair, Board of County Commissioners

Executive Director

Date _____

Date _____

County Counsel Approves to form

County Counsel

Date _____

**See last page of
document for
signature page**

EXHIBIT A

SCOPE OF WORK

Background

The Clackamas County Arts Alliance's (CCAA) mission is to support and promote access to arts and culture across the entire County. For 25 years, the CCAA has been the County's vehicle for delivering arts and culture programs to meet the needs of communities, residents, and visitors. CCAA values drive its advocacy efforts to ensure County quality of life and economic stimulus is improved through everyday access to arts and culture

Guiding Principles

This Agreement holds the following statements as guiding principles for (CCAA and Clackamas County (County):

- County's creative artists contribute to our collective strength, vitality, and community health.
- The arts are crucial to a complete education for all children, and integrating arts into our schools transforms learning, strengthens communities, and increases academic success.
- The unique cultural heritage and history of Clackamas County must be preserved and celebrated.
- The synergy that takes place when organizations and individuals share resources leads to a thriving arts and culture environment.
- Creativity is the number one skill 72% of business leaders seek when hiring.

Use of Funds

CCAA shall use the \$192,405.00 of General Fund budgeted in Clackamas County's FY 2021-22 Adopted Budget and granted under this Agreement for the following:

Clackamas County Arts Alliance

CCAA will use funds to partially support training and capacity-building work for businesses, organizations, and entrepreneurs; public art exhibitions throughout the County; robust arts education program in regional schools and social service organizations; and an award-winning arts diversion program operated with the County's Juvenile Department. General Fund dollars also support highly successful marketing efforts, giving CCAA the ability to reach more residents, serve more youth and grow private-sector contributions.

CCAA will serve as both liaison and advocate for the county arts and culture community, providing leadership, resources, and direction as well as functioning as convener for individual artist groups (by discipline,) in addition to the various arts and culture organizations throughout Clackamas County.

CCAA will be available to advise local businesses, Chamber of Commerce, and Clackamas County city governments seeking arts and culture expertise, always looking for ways to connect local businesses and government with the county's arts and culture community for collaboration in support of local economic development and cultural tourism.

CCAA will support the Board of County Commissioners in a proactive way enabling them to understand the various needs as well as the positive impact of the arts and culture community in the county.

Young Audiences

CCAA shall provide \$27,000 in funds to Young Audiences of Oregon for arts programming through Right Brain Initiative, an innovative arts education program serving 6,300 students in 22 schools in Clackamas County. CCAA will coordinate communication with Young Audiences including financial and program reports.

Monitoring. CCAA agrees to allow access to conduct financial and performance audits for the purpose of monitoring in accordance with Generally Accepted Auditing Standards (“GAAS”). County, and its duly authorized representatives, shall have access to such records and other books, documents, papers, plans, records of shipments and payments and writings of CCAA that are pertinent to this Agreement, whether in paper, electronic or other form, to perform examinations and audits and make excerpts, copies and transcripts. CCAA also agrees to provide reasonable access to CCAA’ employees for the purpose of monitoring. Audits may be performed onsite or offsite, at the County’s discretion. If any audit or financial review finds that payments to CCAA were in excess of the amount to which CCAA was entitled, then CCAA shall repay that amount to County.

Financial Management. CCAA 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.

Request for funding

Upon full signature of this agreement, CCAA must request the first via a letter in order to process the disbursement. The second \$96,202.50 must be requested no earlier than January 1, 2022 via a letter to the County Operations Officer.

Reporting

CCAA shall provide quarterly reports to the Clackamas County Operations Officer. Quarterly reports will include the following information:

- Reporting period
- How funds were spent
- If funding was used to support staff, provide name and position
- How did funding support the operations of CCAA for the quarter

Quarterly reports are due by:

September 30, 2021

December 31, 2021

March 31, 2022

June 30, 2022 – This quarterly report should be in the form of an annual report and presented to the Board of County Commissioners on an agreed date.

limited to, fire, terrorism, riot, acts of God, or war. However, CCAA 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.

- S. Confidentiality.** CCAA 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 CCAA or its employees or agents in the performance of this Agreement shall be deemed confidential information of the County ("Confidential Information"). CCAA agrees to hold Confidential Information in strict confidence, using at least the same degree of care that CCAA 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.
- T. 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

Chair, Board of County Commissioners

Date _____

**Arts Action Alliance Foundation, dba
Clackamas County Arts Alliance**

Dianne Amador

Executive Director

Date 8/15/21

County Counsel Approves to form

by

County Counsel

Date 09/01/2021